

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

122

2023:PHHC:100896

**RSA-1535-2021 (O&M)  
Date of decision: 04.08.2023**

**AMITA DEVI AND ANOTHER**

**..Appellants**

**Versus**

**SANKTA PARSAD TIWARI**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Raj Kumar Gupta, Advocate  
& Mr. Ashish Gupta, Advocate  
for the appellants.

Mr. Kulvir Narwal, Advocate  
Mr. Shubham Chaudhary, Advocate  
Mr. Satish Kumar, Advocate  
for respondent.

**ANIL KSHETARPAL, J(Oral)**

1. The correctness of the concurrent findings of fact arrived at by the Courts below are challenged in this appeal by the defendants. The plaintiff's suit for grant of decree of possession of the plot has been decreed. While filing the suit, the plaintiff claimed the possession of the plot with the following demarcation and description of the property with reference to the property of owners located on four directions:-

|               |                                                                       |                     |
|---------------|-----------------------------------------------------------------------|---------------------|
| <i>“East:</i> | <i>Gali 18’ wide</i>                                                  | <i>side 37’- 6”</i> |
| <i>West:</i>  | <i>Land of others,</i><br><i>now house of Sanjeev</i>                 |                     |
| <i>North:</i> | <i>Gali Sare Aam 16’ wide</i>                                         | <i>side 30’- 0”</i> |
| <i>South:</i> | <i>Land of Indraj Singh Singh etc</i><br><i>now house of Bijender</i> | <i>side 30’- 0”</i> |

2. The plaintiff claims that he has purchased 125 square yards of land from Indraj Singh son of Sh. Pirthi Singh, who was admittedly the owner of the property. The defendant contested the suit while stating that the same Sh. Indraj Singh had sold the property measuring 130 square yards in favour of Smt. Bala Rani vide sale deed dated 03.12.1999. Thereafter, the aforesaid

Smt. Bala Rani transferred 77 square yard plot to the defendant vide sale deed dated 17.06.2014. Both the Courts have decreed the suit.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook as well as copies of all the three sale deeds, which have been produced by the learned counsel representing the parties.

4. It is not in dispute that the vendor of the plaintiff as well as predecessor of the defendant is same. The sale deed in favour of the plaintiff is prior in time.

5. The learned counsel representing the defendant contends that the plaintiff never got mutation of the sale deed entered in his favour and he has failed to produce evidence to prove his prior possession. He further submits that the suit filed by the plaintiff after a passage of 20 years from the sale deed is barred by time and the plaintiff does not challenge the validity of sale deed in favour of the defendant. In the end, he submits that the plaintiff should have filed a suit for possession by way of partition because the *khata* of Sh. Indraaj Singh was joint.

6. This Court has considered the submissions, while analyzing the arguments of the learned counsel representing the parties.

7. As regards the first argument, it may be noted that mutation is merely an entry in the revenue record, which reflects the factum of transfer of property, however, the ownership is transferred by way of sale deed. Hence, failure on the part of the plaintiff to get the land mutated in his favour would not be relevant.

8. With regard to the second argument, it may be noted that the plaintiff has filed a suit for possession on the basis of the ownership. He has averred that he was dispossessed on 21.12.2014. In any case, an owner can file a suit for possession as per Article 65 of the Limitation Act, 1963 till the time, the defendant proves his title by way of the adverse possession. Hence, there is no substance in the argument of the learned counsel with regard to the limitation period. Moreover, this was never taken up before the Courts below.

9. With respect to the argument No.3, it may be noted that the plaintiff has not challenged the correctness of the sale in favour of the defendant. These are two independent sale deeds. The plaintiff is seeking possession of the property purchased by him through the sale deed dated 07.04.1995. This Court with the able assistance of the learned counsel representing the parties has compared the description of the property from the sale deed as well as the plaint. The suit has been filed with respect to the property which was purchased by the plaintiff.

10. The last argument of the learned counsel representing the appellants is with regard to the requirement of the plaintiff to file a suit for partition. This Court has considered the submissions. The property is not an agricultural land. It is in the form of residential plots. Moreover, the plaintiff as well as defendant have purchased the specific plots. In such circumstances, the plaintiff and defendant shall not be deemed to have become co-owner with Sh. Indraaj Singh.

11. In the end, the learned counsel representing the appellants submits that the First Appellate Court has erred in dismissing application for permission to lead additional evidence as he wanted to produce the

demarcation report. A copy of the demarcation report dated 22.10.2017, has been produced by the learned counsel representing the appellants. This Court has examined the same. In the demarcation report, it has been concluded that the property purchased by the defendant is located in khasra No.3306. The learned counsel representing the appellants has submitted that the plaintiff has purchased the property from khasra No.3305.

12. As already noticed, the khasra number loses its significance particularly when the property is in the shape of the residential plots. It is evident from the sale deed of the plaintiff that on the East of the plot, there is a street, which is 18 feet wide, whereas, on the North, there is another street, which is 16 feet wide. On the West of the plot, there is a property of the other landowners, whereas, on the South of the plot, there is a house of the vendor namely Sh. Indraj Singh. The plaintiff has claimed possession of the aforesaid plot, which has been decreed by both the Courts below. Hence, the demarcation report would not help the case of the appellants.

13. Hence, no ground to interfere is made out.

14. Dismissed accordingly.

15. All the pending miscellaneous applications, if any, are also disposed of.

August 04<sup>th</sup>, 2023

Ay

(ANIL KSHETARPAL)  
JUDGE

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*