

RSA-659-2023(O&M)

2024:PHHC:009358

1

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

RSA-659-2023(O&M)

Date of decision :23.01.2024

Nirmal Singh and another

...Appellants

Vs.

Jarnail Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellants.

Mr. Rohit Singla, Advocate
for the caveator.

ANIL KSHETARPAL, J.

1. In this regular second appeal, the defendants No. 11 and 12 assail the correctness of concurrent findings of the fact arrived at by the Courts below. The plaintiffs filed a representative suit under Order I Rule 8 of the Code of Civil Procedure, 1908 for grant of decree of declaration that the land measuring 53 kanals 16 marlas is Mustarka Malkan land and the plaintiffs are in joint possession of the same. The suit was filed on behalf of all the proprietors of the village. The defendants while contesting the suit claimed that they had purchased the property from their vendor who had in turn purchased the property from Chand Singh. It has come on record that Chand Singh filed a suit for grant of permanent injunction against Gram Panchayat on 03.02.1970, which was decreed on 20.04.1971. Chand Singh was only granted a decree of permanent injunction against forcible dispossession. However, he manipulated

with the revenue authorities and got a mutation sanctioned in his favour reflecting that Chand Singh is the owner of the property. On the basis of the aforesaid mutation entry, he suffered the decree in favour of defendants No. 2 and 3, who in turn sold the property that changed hands on various occasions.

2. Both the Courts on appreciation of evidence have found that sanctioning of mutation by the revenue authorities was illegal because there was no decree of declaration in favour of Chand Singh with respect to the ownership of the suit property.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book along with the requisitioned record.

4. Learned counsel representing the appellants contends that the suit filed by the plaintiffs was not maintainable because the consequential relief i.e. possession was not sought. He submits that in an application for amendment under Order VI Rule 17 CPC to add relief of possession was filed, however, the same was dismissed.

5. This Court has considered the submission of the learned counsel representing the appellant. It is evident that the appellants have no right, title or interest in the property. At the most, their right flows from Chand Singh, who himself has no ownership. Further, it is a Jumla Mustarka Malkan land, which is joint between the various proprietors. The relief of possession can only be sought after the property is partitioned. Till the property is joint, the suit for possession could not be filed.

6. In view of the aforesaid facts, no ground for interference is made out.
7. Hence, dismissed.

23.01.2024

(ANIL KSHETARPAL)

JUDGE

neeraj

Whether speaking/reasoned :

Whether Reportable :

Yes

No

Yes

No