

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

RSA No.2440 of 1989 (O&M)

Date of Order:25.01.2024

Balwant Singh and others**.Appellants****Versus****Darshoo alias Darshan Singh(since deceased) through his LRs****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. Vipin Mahajan, Advocate
for the appellants.****Mr. Mohit, Advocate, for
Mr. A.K.Ahluwalia, Advocate
for the respondents.****ANIL KSHETARPAL, J(Oral)**

1. A very short but interesting question is presently before this court for adjudication.

2. There is no dispute between the parties that the plaintiff (respondent)-Darshoo alias Darshan Singh executed an agreement to sell with respect to 33 kanals and 3 marlas of land which included the land comprised in Rect. No.9, Khasra No.1/1. Ultimately, the sale deed was also executed by Sh. Darshoo alias Darshan Singh in favour of the defendants (appellants herein) with respect to 33 kanals and 3 marlas land.

3. It is the case of the defendants that while mentioning the details of the land in the sale deed, the land comprised in Rect. No.9, Khasra No.1/1 (2 kanals) was omitted, inadvertently.

4. The plaintiff filed a suit for possession of the land comprised in Rect. No.9, Khasra no.1/1 in 1985, claiming that though the agreement to sell was entered into with respect to 33 kanals and 3 marlas land, however,

the defendants failed to arrange the funds and ultimately it was mutually agreed that Sh. Darshoo alias Darshan Singh will mortgage the land measuring 33 kanals and 3 marlas in favour of the defendants (the appellants) for a sum of Rs.40,000/-, however, the defendants by misrepresentation got the sale deed executed.

5. Both the Courts on appreciation of the evidence found that the plaintiff (Sh. Darshoo alias Darshan Singh) failed to establish any misrepresentation in execution of the sale deed. It has also been held that the sale deed was executed and registered by Sh. Darshoo alias Darshan Singh in favour of the defendants on receipt of the entire sale consideration.

6. This appeal was admitted for regular hearing. The appellants (defendants) filed an application under Section 26 of the Specific Relief Act, 1963, for rectification of the instrument to which a reply has already been filed by the plaintiffs.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record which is available in the digital form.

8. The facts, as already noticed, are not disputed between the parties. It is evident from the perusal of the sale deed that 10 kanals 1 marla land was sold from the land comprised in Rect. No.9, Khasra No.1/1 and 1/2 and Rect. No.9, Khasra No.14/2 and 15, whereas the land measuring 23 kanals and 2 marlas land was sold out of the land measuring 52 kanals and 12 marals bearing Khasra Nos.18/19/2, 20/, 19/16/1, 25, 21/5, 18/18, 22/1/1, 2/1, 1/2, 2/2, 10, 18/21/2, 19/1, 21/1, 19/3. If the area of 10 kanals 1 marla land is calculated in the land described in the sale deed, it becomes evident that inadvertently the land comprised in Rect. No.9/1/1 measuring 2 kanals

has been omitted and unless the omitted area is not included, the total land does not amount to 33 kanals and 3 marlas.

9. On the other hand, the learned counsel representing the respondents submits that the defendants never filed any counter claim and now they cannot file a suit for declaration. He submits that the correctness of the sale deed has never been challenged by the defendants and in the regular second appeal, this court cannot grant declaration to the plaintiff.

10. To understand the claims comprehensively, it is relevant to extract Section 26 of the Specific Relief Act, 1963. The aforementioned Section reads as under:-

“26. When instrument may be rectified.—

(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third

persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced

. (4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.”

11. On careful perusal of the said section, it becomes evident that if an instrument in writing does not express the real intention of the parties then the aggrieved party can file a suit to rectify the instrument. In this case, the defendants filed the application and prayed for rectification. It has been stated that they have purchased 33 kanals and 3 marlas land and that the area would not be complete unless the land comprised in Rect. No.9, Khasra No.1/2(2 kanals) is added to the description of the property in the sale deed. The learned counsel representing the plaintiff does not dispute that fact, however, he asserts that this court shall not grant the releif of rectification. Section 26 clause (1), sub-clause(c) distinctly gives a right to the defendant to seek rectification by filing an application. The provision does not necessitate filing of counter claim on same grounds for seeking rectification of the instrument.

12. The second argument of the learned counsel representing the appellant also holds weight because the correctness of the sale deed is not disputed by the appellants. There is a patent error in the sale deed with respect to the khasra numbers mentioned in the instrument in order to

identify the total land measuring 33 kanals and 3 marlas. Due to that mistake, Rect. No.9, Khasra No.1/1(2 kanals) was not mentioned in the description of property. The plaintiff's have not claimed that they have sold land to defendant falling in any other khasra number in lieu of khasra no.1/1 of Rect. No.9. The facts of the case are such that the proper remedy that is available to the defendants is the rectification of instrument. The defendants are not required to seek annulment of the sale deed as its authenticity is not in dispute. They have knocked the doors of the court for rectification to ensure that they are shown to be the owners of 33 kanals and 3 marlas land which was sold to them as per records also.

13. Keeping in view the aforesaid facts and discussion, the application filed under Section 26 of the Specific Relief Act, 1963, is allowed. Consequently, the judgments passed by the courts below are set aside and the suit filed by the plaintiff stands dismissed.

14. The appeal stands allowed, accordingly.

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

January 25, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO