
(2003) 07 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3250 of 2003

Rakesh Kumar and others

APPELLANT

Vs

Om Parkash and others

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Citation : (2004) 2 ICC 574 : (2004) 1 RCR(Civil) 528

Hon'ble Judges : M.M.Kumar, J

Advocate : Mr. Anil Ghanghas, Advocate. None., Advocates for appearing Parties

Judgement

M.M. Kumar, J.—This is plaintiff's appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity 'the Code') challenging the judgment of the Additional District Judge dated 28.1.2003 reversing the findings of facts recorded by the Civil Judge in his judgment dated 29.10.1999.

2. Brief facts of the case are that the plaintiffappellant (who is now represented by appellant No. 1) filed a suit for declaration to the effect that mutation Nos. 926, 927 and 928 dated 15.4.1991 and mutation No. 970 dated 17.3.1993 are illegal. He also challenged the judgment and decree dated 5.2.1993 passed by the Civil Judge, Mohindergarh in civil suit No. 93 titled as Om Parkash v. Raghbir Singh and prayed for a decree of injunction restraining the defendantrespondents from interfering in his possession over the suit property, which is their ancestral land.

3. The learned trial Court recorded a finding that the exchange of land as alleged by the defendantrespondents was not proved and, therefore, mutation No. 926 was held to be illegal, null and void. The consequent mutation Nos. 927 and 928 dated 15.4.1991 and mutation Nos. 970 dated 17.3.1993 alongwith the judgment and decree dated 5.2.1993 were held to be illegal, null and void. The lower appellate court, however, reversed the findings by holding that Hari Singh sold land measuring 16 kanals 4 marlas out of 32 kanals 10 marlas and he was entitled only to 1/4th share out of the total area. However, sale made to Raghbir Singh was not given effect and he was shown owner of the land in Jamabandi Ex.

D2 and Ex. P15, which led to a dispute between them. The dispute was mutually resolved by transfer/exchange. The views of the Additional District Judge are patent from para 13, which read as under :

"13. As per jamabandi for the year 1960/61 Deep Chand, Hari Singh, Ram Kaur, Chandrawali, Mishro and Paaro being the legal heirs of Hiranand were owners to the extent of half share. In the land comprised in Khewat No. 76 Khatoni No. 88 (measuring 110 kanals 1 marla), khewat No. 77 khatoni No. 89 (measuring 4 kanals 11 marlas). It is also the case of Hari Singh that after the death of Paaro her shares devolved upon Deep Chand, Hari Singh, Ram Kaur, Chandrawali and Mishro.

Ex. D.3 is the mutation No. 854 dated 9.4.1985 whereby land measuring 8 kanals 2 marlas comprised in Rect. No. 78, killa No. 6, Rect. No. 79, killa No. 9, 10 and 11/1 was mutated in favour of Raghbir on the basis of sale deed No. 2022 dated 22.3.1982. Hari Singh sold the above said land to Raghbir Ex. P10 is the mutation No. 927 whereby another land measuring 8 kanals 2 marlas was mutated in favour of Raghbir in view of sale deed No. 370 dated 23.6.1982 executed by Hari Singh in favour of Raghbir. Thus, from both these mutations, it is apparent that Hari Singh sold land measuring 16 kanals 4 marlas out of his share in the land. He was owner to the extent of 1/4 share. Both these sales were made in the year 1982, at that time khewat No. 76 had area measuring 110 kanals 1 marla as has been mentioned in paras No. 1 and 3 of the plaint. However, from the perusal of jamabandi Ex. D2 and Ex. P15 it is apparent that the sale made in favour of Raghbir vide sale deed No. 370 dated 23.6.1982 was not given effect to and he was shown owner of the said land in jamabandi Ex. D2 and Ex. P15. So, according to the appellants this led to a dispute between them and Raghbir. It is the case of the appellants that as a dispute had arisen because of lapse on the part of the revenue authorities in giving effect to sale deed No. 370. So, the said dispute was got settled by transferring the share of respondents No. 2 and 6 to Hari Singh who in turn transferred the same to the appellants. Mutations are Ex. P10 and Ex. P11 to this effect. Ex. P11 bears a detailed order of the Assistant Collector IIInd Grade Mahendergarh which was passed by him in the presence of all the concerned parties and on the basis of their consent. So from mutation No. 926 (Ex. P11) it is apparent that out of 32 kanals 10 marlas land, the land measuring 8 kanals 2 marlas of the share of Ranbir, Santosh, Bala, Bhagwani and Karia was transferred in favour of Hari Singh. Ex. P1 is the mutation No. 927 whereby the share of Hari Singh was transferred to Raghbir Singh."

(Emphasis added)

The learned counsel for the plaintiff/appellant has argued that mutation No. 926 Ex. P11 is liable to be set aside because it has taken place in a village other than the one the land is situated and none of the parties have signed the same. According to the learned counsel no exchange deed has in fact been executed.

4. The aforementioned argument raised by the learned counsel was rejected by the Additional District Judge by holding that from the order passed by the Assistant Collector, Ist Grade, it is apparent that all the concerned parties were present and they had consented to the transfer of the land. Even otherwise, oral exchanges are valid as has been held in the cases of *Amar Singh v. Sarna*, 1984 R.R.R. 230 : 1982 RLR 32 and *Matadin v. Sultan*, 1986 R.R.R. 68 : 1986 PLJ 696. Consequently, the mutation Nos. 927, 928 and 970 were also held to be valid. For those reasons which have been assigned by the learned Additional District Judge, no interference would be warranted because these are findings of facts recorded by both the Courts below. Under Section 100 of the Code interference in such finding is not to be made unless it is shown that the findings are without evidence. In a catena of judgments, the Supreme Court has taken the view that even if on reappraisal of evidence, this Court records a conclusion different than the one recorded by the Courts below. Interference under Section 100 of the Code is unwarranted. This view has been expressed by the Apex Court in *Tirumala Tirupati Devasthanams v. K.M. Krishnaiah*, 1998(3) R.C.R.(Civil) 6 : 1998(1) R.C.R.(Rent) 610 : 1998(3) SCC 331; *Satya Gupta v. Brijesh Kumar*, 1998(4) R.C.R.(Civil) 37 : 1998(6) SCC 426; *Chandrabhagabai v. Ramakrishna and others*, 1998(3) R.C.R.(Civil) 391 : 1998(2) R.C.R.(Rent) 133 : 1998(6) SCC 207; *Ram Prasad Rajak v. Nand Kumar and Brothers and another*, 1998(2) R.C.R.(Rent) 249 : 1998(6) SCC 748; *M.G. Hegde and others v. Vasudev*, 2000(2) SCC 213; *State of Rajasthan v. Harphool Singh (dead) through L.Rs.*, 2000(3) R.C.R.(Civil) 191 : 2000(5) SCC 652; *M. Nadar Kesavan Nadar v. Narayanan Nadar Kunjan Nadar*, 2000(10) SCC 244; *Baidyanath Bhattacharya v. S. Karmakar*, 2000(9) SCC 505; *Manorama Thampuratti v. C.K. Sujatha Thampuratti*, 2000(9) SCC 233; *Chandragouda and another v. Shekharagouda S. Pittangoudar*, 2000(10) SCC 617; *Thimmaiah and others v. Ningamma and another*, 2000(7) SCC 409; *Mohd. Abdul Muqtedar v. Sk. Fakruddin*, 2000(9) SCC 384; *G. Thankamma Amma v. N. Raghava Kurup*, 2000(9) SCC 517; *Ananta Kalappa Jaratakhane v. Krishtappa*, 2000(9) SCC 735; *Kempaiah v. Doddanaraiah*, 2000(9) SCC 60; *Mohd. Hadi Hussain v. Abdul Hamid Choudhary*, 2000(10) SCC 248 and *Ajit Chopra v. Sadhu Ram*, 1999(4) R.C.R.(Civil) 635 : 1999(2) R.C.R.(Rent) 575 : 2000(1) SCC 114.

For the reasons recorded above, this appeal fails as no question of law has arisen warranting its admission.