

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4238 of 2015 (O/M)
Date of decision : 2.9.2015

Tanvir Singh and others

..... Revisionists

Versus

Surinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arun Jain, Senior Advocate, with,
Ms. G.K. Mann, Advocate, for the revisionists.

Mr. Chetan Mittal, Senior Advocate, with,
Mr. Mayank Mathur, Advocate,
for caveator-respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Revisionists, who are plaintiffs before the lower Court, have filed this revision, challenging the order dated 19.8.2014, passed by the learned Civil Judge (Junior Division), Patiala, dismissing their application under Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 ('CPC') and also for modifying the order dated 28.5.2015, passed by the learned Additional District Judge, Patiala, vide which the partial relief was granted to them.

The brief facts of the case are that plaintiffs No. 1 to 3

CR No. 4238 of 2015 (O/M)

-2-

(minors) alongwith their mother Simrat Kaur Randhawa have filed a suit for declaration to the effect that they are owners in actual physical possession of the suit land, fully detailed in headnote of plaint, being sole surviving legal heirs of deceased Rajeev Inder Singh @ Pawandeep Singh over the disputed property situated at village Nasirpur, Bir Bahadurgarh, Tehsil and District Patiala and at village Sultanwind, District Amritsar. Further declaration was sought that the gift deeds, wills, transfer deeds, civil court decrees, mutations etc. sanctioned in favour of defendants regarding the estate of Basant Kaur and Sikandar Singh are illegal, null and void, without consideration and without legal necessity and are liable to be set aside and the revenue entries in the name of the defendants to the exclusion of the rights of the plaintiffs in the suit properties are also illegal and are liable to be corrected. Permanent injunction was also sought for restraining the defendants from alienating, transferring, mortgaging or creating any charge etc. over the suit properties and from dispossessing the plaintiffs from exclusive possession over the disputed properties and also the residential house/farm house including adjoining infrastructure shown in the attached site plan.

The plaintiffs claim that they are the members of Joint Hindu Family to the exclusion of defendants No. 2 to 6 and the entire suit property is ancestral property. Qua the plaintiffs, it is stated that

CR No. 4238 of 2015 (O/M)

-3-

the ancestor of the plaintiffs, namely, Jagat Singh, owned huge property in Mont Gomery (now in West Pakistan). Their forefathers expired in Pakistan. Jagat Singh was succeeded by his three sons, namely, Sikandar Singh, Bhupinder Singh and Satwant Singh. In lieu of the said ancestral land left in Pakistan, they were allotted land in various villages of Punjab, namely, Bir Bahadurgarh, Nasirpur, Shekhpura Kamboan, Chuaharpur Kamboan and Saifdipur, Tehsil and District Patiala and also in village Sultanwind, Tehsil and District Amritsar. Bhupinder Singh died unmarried and his property was inherited by Satwant Singh and Sikandar Singh in equal shares, which also became ancestral and coparcenary property. Sikandar Singh got married to Surinder Kaur (defendant No. 1). Defendant No. 1 being the active member in the family took the control of the entire properties and decided to manage the same in her own way and for same reason, she prevailed upon her husband Sikandar Singh and his brother Satwant Singh. Satwant Singh transferred his land in the name of Basant Kaur through transfer deed No. 202, dated 21.3.1958. Sikandar Singh transferred his land in favour of defendant No. 1, vide transfer deed No. 203 dated 26.2.1958. Sikandar Singh again transferred the land in favour of Kartar Singh, who was the father of defendant No. 1, vide transfer deed No. 5893 dated 20.3.1970. Basant Kaur widow of Jagat Singh also transferred the land in favour of defendant No. 2, namely, Selina,

CR No. 4238 of 2015 (O/M)

-4-

vide gift deed No. 1822 dated 18.8.1970. Basant Kaur and Surinder Kaur transferred their land measuring 104 kanals 17 marlas in favour of defendant No. 3, namely, Poonam, vide gift deeds No. 1802 and 1804 dated 17.8.1970. After the death of Basant Kaur, defendant No. 1 Surinder Kaur prepared a forged Will and got the mutation sanctioned in favour of Madhuvir Singh, Rajeev Inder Singh @ Pawandeep Singh, Poonam and Selina. The land was also transferred in the name of Parkash Kaur, who was mother of defendant No. 1 Surinder Kaur. After the death of Parkash Kaur, the land was got transferred in the name of Surinder Kaur. After the death of Sikandar Singh, the lands situated in villages Nasirpur, Bir Bahadurgarh, Tehsil and District Patiala and in village Sultanwind, Tehsil and District Amritsar, were transferred in the name of Surinder Kaur on the basis of forged and fabricated Will dated 14.11.1999. The land in village Nasirpur was transferred in the name of Selina by Surinder Kaur, vide gift deed No. 417, dated 2.5.1972. Dhaninder Kaur also transferred her land in favour of Poonam and Selina by way of succession in the year 1979. Selina and Poonam had no right in the suit property as they were already adopted by Saranjit Singh and Harmohinder Singh, vide registered adoption deeds dated 3.3.1972 and 7.2.1972. Surinder Kaur also got transferred some land through a civil court decree from Sikandar Singh on 30.8.1977 in her favour. The said property was coparcenary and ancestral

CR No. 4238 of 2015 (O/M)

-5-

property and Sikandar Singh could not suffer the said decree as it is illegal. All the transfers were made by defendants No. 1 to 6 to the exclusion of the rights of Rajeev Inder Singh @ Pawandeep Singh. It is further alleged that Surinder Kaur got prepared a forged and fabricated Will of Parkash Kaur. The plaintiff alongwith minor children is residing in a farm house known as Nasirpur Farm at Patiala. Plaintiffs claim that they are in possession of the disputed property. It is stated that defendant No. 1 is now suffering from serious ailment since 2011 and is bed ridden due to tuberculosis of spine. She is aged about 83 years and suffered a massive heart attack in August 2013 and was operated upon. She has been prevailed upon by her two daughters, who had already been given by adoption. Rajeevinder Singh @ Pawandeep Singh expired in 2011 as he was suffering from cancer, leaving behind the plaintiffs. Plaintiff No. 4 is a doctor by profession and she is taking care of her minor children. Defendants are trying to dispossess the plaintiffs by interfering in the disputed property.

In the written statement, the stand of the defendants is that the disputed property is not joint Hindu ancestral/coparcenary property. It was stated that in the suit, no details of Wills and gift deeds, transfer deeds, civil court decree and mutation have been given. The wills, transfer deeds and gift deeds, mentioned in the plaint, were asserted to be correct. It is stated that the present suit

CR No. 4238 of 2015 (O/M)

-6-

has been filed only as a counter blast to the criminal writ petition filed before this Court, wherein Surinder Kaur was ordered to be given protection in the habeas corpus petition, filed by Manjinderpal Singh, husband of Selina. The possession of the plaintiffs over the property is also denied. The allegations were also levelled that one DIG Gurinder Singh Dhillon, Jalandhar Range, had confined defendant No. 1 in one room. It was further alleged that a false case has been registered against defendant No. 3 Poonam and her husband Yogeshwar Krishan Dhawan (defendant No. 4) for refraining them from looking after the defendant No. 1 and their properties.

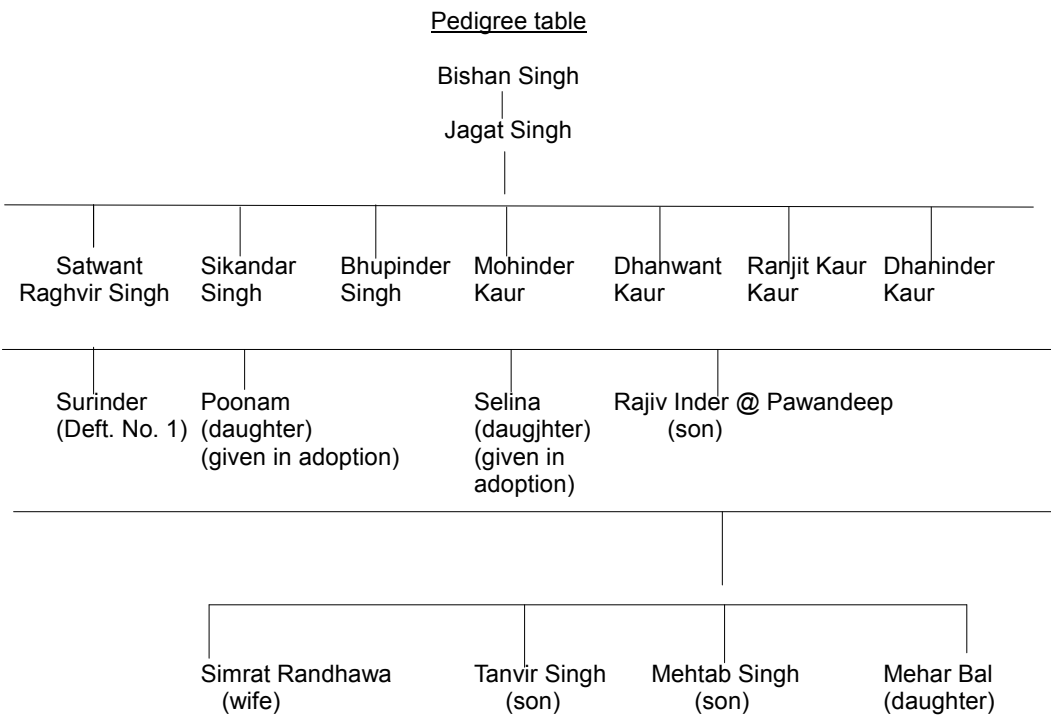
Alongwith the suit, an application under Order 39 Rules 1 and 2 CPC was filed, which was dismissed by the learned Civil Judge (Junior Division), Patiala, vide order dated 19.8.2014.

The plaintiffs preferred an appeal against the said order. The learned Additional District Judge, Patiala, vide judgment dated 28.5.2015, modified the said order and directed the parties to maintain status quo regarding the possession of the farm house known as Nasirpur at Patiala and that too except in due course of law. The remaining relief was declined. It was stated that the plaintiffs are not entitled to further relief of injunction regarding possession of agriculture land and also that of alienation of suit land since the doctrine of lis pendens will apply.

CR No. 4238 of 2015 (O/M)

I have heard the learned senior counsel for the parties and have also carefully gone through the file.

Admittedly, the plaintiffs have challenged the gift deeds, transfer deeds and wills etc. from 1958 onwards. The plaintiffs No. 1 to 3 are minors. They are two sons and a daughter of Rajeev Inder Singh @ Pawandeep Singh, who is now dead. Their claim is that the suit property was allotted in lieu of the land left by their ancestor Jagat Singh in Pakistan. Following pedigree table has been set up in the plaint :-



Learned senior counsel for the revisionists has argued that in this case, the learned Civil Judge (Junior Division), Patiala, has passed a detailed order running into 42 pages, wherein infact

CR No. 4238 of 2015 (O/M)

the findings have been recorded on merits as if the suit is being decided after recording the evidence. It has been argued that the approach of the learned Civil Judge (Junior Division), Patiala, is erroneous. Recording the findings at this stage would adversely affect the case of the either party. The learned Civil Judge (Junior Division), Patiala, has also reproduced the transactions between the parties, which are reproduced as under :-

<u>Sr. No.</u>	<u>Owner</u>	<u>Transferred to</u>	<u>Nature of transfer</u>	<u>Years of Transfer</u>
1.	Sikandar Singh	Suridner Kaur	Tamalaknama	1958
2.	Sikandar Singh	Kartar Singh	Sale Deed	1970
3.	Basant Kaur	Selina	Gift Deed	1970
4.	Basant Kaur Surinder Kaur	Poonam	Gift Deed	1970
5.	Basant Kaur	Rajiv, Poonam, Selina	Will	1971
6.	Parkash Kaur	Surinder Kaur	Will	1988
7.	Sikandar Singh	Surinder Kaur	Will	1999
8.	Surinder Kaur	Selina	Gift deed	1972
9.	Dhaninder Kaur	Poonam, Selina	Will	1979
10.	CS Verma	YK Dhawan	Will	

The plaintiffs claim that the suit property was ancestral. Admittedly, Rajeev Inder Singh @ Pawandeep Singh, predecessor-in-interest of the plaintiffs died in the year 2011. During his life time, he did not challenge these transactions. However, it is claimed that

CR No. 4238 of 2015 (O/M)

-9-

the plaintiffs No. 1 to 3 are minors and that they have got their independent right to challenge the same. It also comes out from the order of the appellate Court that an application for correction of khasra girdawari was moved by the plaintiffs and immediately before filing of the suit, khasra girdawaris qua the land of villages Bir Bahadurgarh and Nasirpur were corrected in favour of plaintiffs that too in absence of defendants by the Assistant Collector IInd Grade and the same was upheld by the Collector, Sub Division, Patiala, on 16.7.2011, on the ground that the civil court has already passed the order of status quo. The land of the village Sultanwind is also involved. The application for correction of khasra girdawari of property at villages Bir Bahadurgarh, Nasirpur and Sultanwind is also pending. Therefore, at this stage, it will be improper to record any prima-facie findings regarding the possession of the either party over the disputed land. The plaintiffs have annexed rough sketch of villages Nasirpur, Sheikhpura, Chuharpur Kamboan, Saifdipur and Bir Bahadurgarh showing that the pipeline has been laid down for cultivation and it is claimed by the plaintiffs that the pipeline was laid as the possession over disputed property is with the plaintiffs. Some photographs have also been placed on file to show the possession of the plaintiffs over the disputed property.

I am of the view that in view of the application for correction of khasra girdawaris in the disputed land, it would be

CR No. 4238 of 2015 (O/M)

-10-

unjust to record the findings as to who is prima-facie in the possession of the disputed property. The learned senior counsel for the revisionists has argued that all these transfers were made in order to avoid the losing of the land due to the tenancy law and the Land Ceiling Act. Some transfers were made by Sikandar Singh in favour of his father-in-law and mother-in-law. Even Selina and Poonam were given in adoption to save the land. All these matters are to be examined during trial. Therefore, at this stage, no findings can be recorded nor the allegations and counter allegations can be controverted. The first appellate Court has declined the relief on the ground that 'regarding possession of agriculture land and also regarding alienation of suit land, the doctrine of lis pendens will apply.'

I am of the view that the doctrine of lis pendens is no substitute for the expressed order. In these circumstances, it is ordered that the parties shall maintain status quo regarding the possession over the disputed land till the disposal of suit. However, either party can adopt due course of law for correction of revenue entries or take possession. It is further ordered that any further alienation of the suit property can only be made by either party with the prior permission of the Court.

At the same time, it is not to be lost sight of the fact that very old documents have been challenged and in the normal course,

CR No. 4238 of 2015 (O/M)

-11-

it would take years together and may be decades when the case is actually decided. It is stated in the plaint that Surinder Kaur is suffering from spinal tuberculosis and is 83 years of age. Therefore, the interest of justice requires that the case should be disposed of expeditiously, so that the plaintiffs are not benefitted by default i.e. on account of Surinder Kaur losing a battle for life during the pendency of the suit. Therefore, in consultation with the learned senior counsel for the parties, it was proposed that the case be made date bound. The learned senior counsel for the plaintiffs has stated at bar that he will conclude his evidence within 10 effective opportunities, which will be of one month duration each. For this purpose, he will obtain the summons dasti and produce the witnesses. Similarly, the learned senior counsel for the defendants/respondents has also stated at bar that he will also complete his evidence within maximum 10 effective opportunities of one month duration each.

Therefore, it is further ordered that keeping in view the old age of defendant No. 1, the case shall be decided expeditiously. The plaintiffs shall be given 10 effective opportunities of one month duration each to conclude their evidence and similarly, the defendants shall also be given same number of opportunities of same duration. If any of the party fails to complete their evidence within the said 10 effective opportunities, their evidence shall be

CR No. 4238 of 2015 (O/M)

closed by orders.

The present revision is accordingly allowed.

(KULDIP SINGH)
JUDGE

2.9.2015
sjks