

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

RSA No.3447 of 1987 (O&M)

Date of decision : 14.10.2015

Major Singh

...Appellant

Versus

Gurcharan Singh (through LRs) and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Fariad Singh Virk, Advocate for the appellant.

Mr. Ravish Bansal, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the judgment and decree of both the Courts below.

It would be apt to give few facts before adverting to the rival submission of the parties to the lis. Gurcharan Singh and Partap Singh sons of Talok Singh, instituted a suit bearing No.254 dated 16.08.1982 claiming declaration that they are exclusive owner of land measuring 123 kanals 11 marlas comprising of khasra No.93 to 100 (hereinafter to be referred as land 'A') situated within the revenue estate of Village Ramgarh and also

exclusive owner of land comprising of khasra No.2/10-0, 3/16-0, 4/15-3, 5/6-14, 10/16-0, 11/9-12 measuring 73 kanals 9 marlas (hereinafter to be referred as land 'B') and as well as for permanent injunction restraining defendant from claiming partition of the above said land in the competent Court. Talok Singh and Santokh Singh were real brothers and were in occupation of the aforementioned pieces of land under the landlord Balwant Singh. Santokh Singh died in the year 1959 and left behind his widow Santi as his heir and Talok Singh died in the year 1969.

The plaintiffs inherited the estate left by their father in equal share. Santi Devi had inherited the estate of Santokh Singh as his widow. Talok Singh executed a Will in favour of plaintiffs. After the death of Talok Singh, there was litigation in many Courts. The plaintiffs have sought declaration on the premise that Harjit Singh son of Balwant Singh-landlord had sold the land measuring 123 kanal 11 marla vide sale deed dated 28.05.1958 registered on 11.10.1958. The plaintiffs also staked their claim on the basis of occupancy right in respect of land measuring 73 kanal 9 marla out of 145 kanal 5 marla being half share. The trial Court decreed the suit.

Aggrieved against the aforementioned judgment and decree, the appellant-defendant filed the appeal. The Lower Appellate Court partly accepted the appeal while holding that plaintiffs are declared exclusive owner in possession in respect of land measuring 123 kanal 11 marla and not exclusive owner in possession of land measuring 73 kanal 9 marla. It was further held that Major Singh was entitled to get the land measuring 145 kanal 5 marla partitioned between Gurcharan Singh and Partap Singh to

the extent of one half share and Major Singh would not be entitled to get the one half share in the land measuring 123 kanal 11 marla and the orders dated 02.11.1981 and 01.03.1983 were held to be illegal and null & void.

Mr. Fariad Singh Virk, learned counsel appearing on behalf of appellant submits, that this Court vide order dated 14.05.2004 had sought the report from lower Appellate Court vis-a-vis findings on issue Nos.2 and 6. The lower Appellate Court vide its report dated 14.08.2004 gave the findings against the appellant-defendant and held that Harjit Singh was not the big land owner and the sale deed executed by Harjit Singh in favour of Talok Singh bearing khasra Nos.93 to 100 (prior to consolidation) was valid in law, in essence, Talok Singh had paid the consideration with respect to the sale deed and there is no contribution on the part of Santokh Singh as Santokh Singh had left possession in Rabi 1957 and never remained in the possession.

He further submits that lower Appellate Court has committed illegality and perversity in not granting the relief vis-a-vis property measuring 123 kanals 11 marla owing to the fact that Santokh Singh and Talok Singh being the brothers were in occupation and possession of the land as tenants for number of years and thus they had acquired the ownership to the extent of half share. He further submits that following substantial questions of law arises:-

- “1. Whether Talok Singh and Santokh Singh were occupancy tenants in respect of land measuring 123 kanals 11 marlas prior to execution of the sale deed dated 23.5.1958 and the effect of such tenancy on the sale of land by Harjit Singh*
- 2. Whether Harjit Singh has sold the land measuring 123 kanals*

11 marlas to Talok Singh and Santokh Singh jointly and if to Talok Singh alone, the effect of such sale on the tenancy-occupancy rights of Santokh Singh, if any?”

Mr. Ravish Bansal, learned counsel appearing on behalf of respondents submits that since no evidence has been placed on record on behalf of Major Singh to prove that no contribution was made by his predecessor-in-interest Santokh Singh vis-a-vis the purchase of the land measuring 123 kanal 11 marla, the mutation entry in revenue record does not confer title. The appellant did not challenge the aforementioned sale deed and claimed declaration vis-a-vis the ownership on the ground of occupancy rights. The respondents-plaintiffs were not aggrieved against the findings rendered by the trial Court with regard to granting share to the appellant in respect of land measuring 73 kanal 9 marla and as well as giving the right to seek the partition and submits that no substantial question of law arises for determination by this Court.

He further submits that claim of the plaintiffs by pressing into service of provision of Section 22 of the Pepsu Tenancy and Agricultural Lands Act, 1955 would not be maintainable for the aforementioned reasons.

It would be apt to reproduce Section 22 of the Act:-

“22. (1) Subject to the other provisions contained in this Act, a tenant shall be entitled to acquire from his landowner in respect of the land comprising his tenancy the right, title and interest of the landowner in such land (hereinafter referred to as the 'proprietary rights') in the manner and subject to the conditions hereinafter provided.

(2) Even tenant intending to acquire proprietary rights shall make an application in writing to the prescribed authority in

the prescribed manner, containing the following particulars, namely:-

- (a) the area and location of the land in respect of which the application is made;*
- (b) the name of the landowner from whom proprietary rights are to be acquired;*
- (c) such other particulars as may be prescribed.”*

I have heard learned counsel for parties and appraised the paper book.

On perusal of the aforementioned provision, it is evident that tenants shall be entitled to acquire from his landowner in respect of land comprising his tenancy the rights, title, interest by moving an application to the concerned authorities. In the instant case, no such application alleged to have been submitted, has been proved on record. The appellant-defendant has not challenged the sale deed by filing any counter claim, much less, claimed any declaration with regard to attaining of the ownership by virtue of the aforementioned reasons. The lower Appellate Court as per his report dated 14.08.2004 gave a finding that Harjit Singh was not big land owner and, therefore, Section 22 of the aforementioned Act could not be pressed into service.

Mr. Fariad Singh Virk, Advocate has relied the judgment rendered by Hon'ble Supreme Court in *Gogula Gurumurthy and ors. Vs. Kurimeti Ayyappa, 1974 AIR (SC) 1702* to contend that parties against whom the report had been sought for under provision of Order 41 Rule 25 cannot be precluded to raise plea against the said report, in essence, no further objections or amendment of memorandum of appeal is required.

Mere entry in the revenue record would not show or proved that predecessor-in-interest i.e. Harjit Singh was being landlord and clothe him status of big landlord. In the absence of the challenge to the sale deed, much less, submission of any application to the agrarian authority, while claiming right and title in the property held by the landlord, the appellant-defendant cannot stake the claim vis-a-vis the land measuring 123 kanal 11 marla. Even otherwise, it has also been proved on record that entire sale consideration for purchasing of the aforementioned land was contributed by Talok Singh and not by Santokh Singh, as he had left the possession in Rabi 1957.

In view of what has been observed above, I do not intend to differ with the findings rendered by the Courts below, much less, report dated 14.08.2004.

Questions of law as noticed above, is thus answered against the appellant-defendant and in favour of respondents-plaintiffs.

There is no merit in the appeal.

Present appeal is accordingly dismissed.

14.10.2015

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**(AMIT RAWAL)
JUDGE**