

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

RSA No. 908 of 1987. [O&M]
Date of Decision: 26th August, 2015.

Gurbux Singh [deceased] through his LRs.
Appellant

Versus

Faqir Chand [deceased] through his LRs & Ors.
Respondents

Present: Mr. M.L.Sarin, Sr. Advocate with
Ms. Ankita Samyal, Advocate, for the appellant.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate, for respondent No. 1.

Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Akhilesh Vyas, Advocate, for subsequent vendees.

CORAM: HON'BLE MR. JUSTICE SURYA KANT

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J.

This Regular Second Appeal is at the instance of the plaintiff whose suit for declaration that he is owner in possession of 1/4th share in the land measuring 15 kanals 1 marla situated in the revenue estate of Village Sultanwind Sub Urban, Amrisar, was dismissed by the trial Court vide judgment and decree dated 03.03.1984 and the First Appellate Court also turned down his appeal vide judgment dated 15.10.1986.

[2]. The facts may be noticed briefly.

[3]. The plaintiff [since deceased and represented by his legal heirs] sought a declaration that he along with his two brothers – defendant/respondents No. 3 and 4 [who have also passed away and

are now represented by legal heirs] are owners in possession of land measuring 15 kanals 1 marla comprised in Khasra No. 1206 as per the details given in head-note of the plaint, to the extent of 1/4th share each and that defendant-respondent No. 1 [since deceased and represented by his legal heirs] who claims to have purchased the same from the plaintiff's brother – Harbux Singh – defendant No. 2 [who too is no more and is represented by his legal heirs] can be owner of 1/4th share only and not of the whole Khasra Number. According to the plaintiff/appellant, the suit land was a Joint Khata and owned by him and his brothers in equal shares. Defendant No. 2 sold his share vide registered sale deed dated 09.04.1969 and in this manner, defendant No. 1 – vendee became co-owner to the extent of vendor's 1/4th share. However, the vendee wanted to grab whole of the Khasra Number and managed to get an entry in the Khasra Girdawari in respect of his ownership qua the entire Khasra No. 1206 in collusion and connivance with the revenue officials. The appellant applied for correction of entry in the Khasra Girdawari and his application was accepted by the Assistant Collector 2nd Grade which order was upheld upto the level of Financial Commissioner. The plaintiff-appellant further averred that defendant No. 1 – vendee filed a civil suit without impleading him or his other brothers as party-defendants against defendant No. 2 – Harbux Singh[vendor] for declaration that what had been sold by the latter was the entire Khasra Number 1206 measuring 15 kanals 1 marla. The suit was got decreed fraudulently as the written statement on behalf of Harbux Singh was filed by the son of the vendee in the capacity of vendor's

attorney.

[4]. The first defendant-vendee contested the suit maintaining that Khasra No. 1206 fell to the exclusive share of Harbux Singh – defendant No. 2 in a private partition between him and his brothers and Harbux Singh sold the said entire Khasra number to the vendee for consideration. He further averred that the plaintiff-appellant had already disposed of more than his share in the joint Khata, hence has no right to hold out any challenge to the sale deed executed by his brother – Harbux Singh. The vendee further averred that earlier the plaintiff's along with his brother Jaswant Singh had filed a suit for possession by way of pre-emption, wherein also a similar plea was taken but that suit was dismissed.

[5]. The parties went on trial on the following issues:-

- “1. *Whether the plaintiff and defendants No. 2 to 4 are co-sharers in the land in dispute?OPP.*
2. *Whether defendant No. 2 had sold the land in dispute in favour of defendant No. 1 vide sale deed dated 9.4.1969?OPP.*
3. *Whether Gurbux Singh had sold more than his share in the joint land measuring 488 kanals 10 marlas?OPD*
4. *Whether decree by Shri Charanjit Singh Jawa, SJ, Amritsar dated 26.2.1974 in favour of defendant No. 1 was fraudulently obtained? If so, its effect?OPP*
5. *Whether the plaintiff is estopped by his own act and conduct to claim 1/4th share in the Khasra No. 1206?OPD.*
6. *Whether the suit is barred by the principle of res-judicata as alleged in Para No. 3 of the written statement in preliminary objections?OPD”.*

[6]. The trial Judge held that Khasra No. 1206 was owned by Harbux Singh-vendee and he was competent to alienate the same.

He further held that the suit was barred by the principle of *res-*

judicata. It was consequently dismissed.

[7]. The first Appellate Court considered the Jamabandi [Ex.P-2] which depicted the suit land under joint ownership of the appellant and his brothers in equal shares and that the sale deed in question does give an impression that only 1/4th share of each parcel of land mentioned therein was sold to the vendee. However, the things stood clarified by the Agreement to Sell [Ex.DW6/2] wherein Harbux Singh – vendor was described as the exclusive owner of land comprised in Khasra No. 1206 which he agreed to sell in entirety.

[8]. The first Appellate Court then referred to the Plaint [Ex.D1] of the civil suit filed by the appellant along with his brother Jaswant Singh against the vendee wherein also this very transaction was challenged and in its Para No. 2 they have stated that it was the whole of land measuring 15 kanals 1 marla comprised in Khasra No. 1206 as well as 1/4th share in the other parcel of land measuring 7 kanals was sold by their brother Harbux Singh to the vendee – Faqir Chand. The first Appellate Court, thus, concluded that the expression “1/4th share” in the sale deed in question pertains to only the second parcel of land and not Khasra No. 1206. The first Appellate Court, however, did not place reliance on the judgment [Ex.PW2/2] which was a collusive decree passed in favour of the vendee.

[9]. Similarly, the first Appellate Court set aside the findings of the trial Court on the issue of *res-judicata* as the suit was dismissed vide judgment [Ex.DW7/6] due to failure of the plaintiffs to deposit the process fee and not on merits. With these findings, the appeal was dismissed, giving rise to this second appeal.

[10]. I have heard Shri M.L.Sarin, Senior Advocate with Ms. Ankita Samyal, Advocate, for the appellant, Mr. Ashish Aggarwal, Senior Advocate with Mr. Kulwant Singh, Advocate, for respondent No. 1 – vendee and Shri Baldev Raj Mahajan, Senior Advocate with Mr. Akhilesh Vyas, Advocate, for the subsequent vendees in whose favour respondent No. 1 or his successors are said to have executed Sale Deeds [A-1 to A-11] appended with Civil Misc. No. 7584-C of 2014, which was ordered to be taken up with the main appeal.

[11]. According to Shri Sarin, the following substantial questions of law arise for consideration:-

1. Whether the learned lower Appellate Court has made out a new case for the defendant – respondents, which was not even pleaded by them?
2. Whether an alleged private partition can be looked into which has not been incorporated in the revenue records?
3. Whether the Courts below have relied on inadmissible evidence and have ignored evidence produced on the record by the plaintiff – appellant?
4. Whether the judgment and decrees of the Courts below are perverse and suffer from errors patent on the face of the record and therefore liable to be reversed?

[12]. He contended that the Courts below have gravely erred in holding that Khasra No. 1206 fell to the share of vendor in a private partition or that he could alienate the same. He relied upon Section 123 of the Punjab Land Revenue Act, 1887 to urge that it being a case of partition of agricultural land allegedly out-side the Court, namely, through a private partition, the same becomes valid only if it

is brought to the notice of Revenue Authorities and after obtaining their sanction, the joint Khata is divided. Reliance was placed on a decision of this Court in **Suba Singh Vs. Mohinder Singh & Ors., 1983 PLJ, 429.** Shri Sarin referred to Jamabandi [Ex.P2] to contend that all the brothers are shown as joint owners. He further contended that the Courts below, especially the first Appellate Court have relied upon the 'marked documents' which were not admitted in evidence and are not duly exhibited. Similarly, the order passed by the Financial Commissioner [Ex.PW2/6] dated 07.02.1975 upholding the correction of revenue record which was manipulated by the vendee, was said to have been over-looked by the Civil Courts. According to Shri Sarin, averments made in Para 3 of the plaint dated 01.05.1970 [Ex.D1] also ought to have been considered by the first Appellate Court. He also relied upon Power of Attorney [Ex.PW2/1] dated 10.08.1973 executed by Harbux Singh and Anand Singh authorising their attorney to seek partition of the land. It was contended that had there been any private partition between the brothers, where was the occasion for the vendor – Harbux Singh to execute a post-sale Power of Attorney for seeking partition of the land.

[13]. Shri Sarin also urged that where the judgment of the Courts below is based on misinterpretation of the documentary evidence or consideration of inadmissible evidence, the High Court is fully justified to interfere in the second appeal. He relied upon **Yadarao Dajiba Shrawane [dead] by Lrs. Vs. Nanilal Harakchand Shah [dead] & Ors. [2002] 6 SCC, 404.**

[14]. The Full Bench decision of this Court in **Bhartu Vs. Ram**

Sarup, 1981 PLJ, 204 laying down that a person buying a share in specific Khasra Numbers in a Khewat becomes the co-sharer was also cited. It was urged that when a co-sharer sells individual share in joint property, such sale is always subject to partition [Ref.:**Pokhar [dead] by Lrs. & Ors. Vs. Ram Singh, JT 2001 [10] SC, 110** and **Nasib Kaur & Ors. Vs. Colonel Surat Singh & Ors. [2013] 5 SCC, 218**].

[15]. Shri Aggarwal, learned Senior counsel for the vendee, on the other hand, argued that the total land holding of the plaintiff and his brothers was measuring 488 kanals, out of which 1/4th share of the appellant comes to 122 kanals. He referred to a specific finding of fact returned by the trial Court that the appellant had already sold more than 122 kanals through different sale deeds, namely, more than his own share in the joint Khata, hence he had no cause of action or right whatsoever to institute the present suit. He also questioned the very maintainability of the suit for declaration as the only remedy for the plaintiff-appellant was to seek partition of the entire Khata No. 491, measuring 488 kanals. He further pointed out that in the previous suit also filed by the appellant along with his brother- Jaswant Singh issue of non-partition of Khasra No. 1206 measuring 15 kanals 1 marla was raised but that suit was dismissed. The vendee took this specific plea in Preliminary Objection No. 3 of his written statement and in rejoinder thereto, the appellant could not dispute this fact though he claimed that they had filed a suit for possession by way of pre-emption which had no effect on the instant suit filed on the basis of title.

[16]. Learned counsel for the subsequent vendees relied upon two decisions of this Court in [i] **Ajmer Singh Vs. Dharam Singh, 2006[2] RCR [Civil], 541** categorically holding that non-confirmation of private partition by the revenue authorities, if it is otherwise proved on record, can not negate its acceptance and the Civil Court is competent to hold that a private partition already stood affected and the plaintiff was no longer a co-sharer; and [ii] **Harbhajan Singh & Ors. Vs. Financial Commissioner, Cooperation, Punjab, Chandigarh & Ors., 2009[3] RCR [Civil], 563** [DB], affirming the view taken by learned Single Judge in **Ajmer Singh's case [supra]**.

[17]. Having heard learned counsel for the parties and after going through the record, I find that there are two inter-related questions, namely, [i] whether Harbux Singh had sold 1/4th share or entire Khasra No. 1206 to the vendee vide sale deed dated 09.04.1969? and [ii] if it is found that he had sold the entire Khasra No., whether the plaintiff-appellant is entitled to seek the desired declaration?

[18]. The Courts below have concurrently held that the sale deed dated 09.04.1969 [Ex.DW4/1] unequivocally recites that out of “*Joint Khata No. 491*”, the vendor had sold Khara No. 1206 measuring 15 kanals 01 Marla along with land measuring 7 Kanals out of Khasra No. 4078 to the extent of his 1/4th share. In other words, the sale deed recites 1/4th share with reference to Khasra No. 4078 measuring 7 kanals and not Khasra No. 1206 measuring 15 kanals 1 marla. The doubt, if any, was removed by the Agreement to Sell [Ex.DW6/2] which surely says that Harbux Singh agreed to sell

Khasra No. 1206 to Faqir Chand and that the said Khasra Number had fallen to the share of vendor in a family partition.

[19]. Having held that, the Courts below have further found as a matter of fact that the appellant was a co-sharer to the extent of 1/4th share in joint Khata No. 491 measuring 488 kanals 10 marlas. In this manner, land measuring 122 kanals 2½ Marlas fell to his share but the plaintiff-appellant had already sold 138 kanals 13 marlas by way of series of sale deeds, specifically mentioned by the trial Court in para No. 5 of its judgment, i.e., much more than his 1/4th share.

[20]. It is true that while relying upon different sale transactions executed by the plaintiff – appellant, the Courts below have referred to some 'marked' sale deeds but fact of the matter is that several such sale deeds have been duly exhibited also. Further, the vendee has brought on record copy of Jamabandi [Ex.DW7/7] for the year 1975-76 which clearly depicts the sale of land measuring 138 kanals 13 marlas by the appellant out of joint Khata to various vendees.

[21]. No evidence to rebut the above stated finding of fact has been led by the plaintiff-appellant. No argument was raised before the first appellate Court that the sale of land by the plaintiff-appellant on different occasions did not exceed his 1/4th share in the joint Khata.

[22]. The Courts below have further found that the sale deeds executed by the plaintiff – appellant were of specific Khasra Numbers duly acknowledging the delivery of possession to the vendees. The area of land sold by the plaintiff-appellant through some of the sale deeds further reveals that the land was *Gair Mumkin*, namely, where

houses stood constructed. In this manner, the appellant had sold the land by carving out plots in specific Khasra Numbers and delivered possession to the vendees. If there was no family partition amongst the brothers, how could then the plaintiff- appellant sell the land to various vendees with specific khasra numbers and measurements in yards or meters?

[23]. The appellant's contention that the sale deeds executed by him were also out of joint Khata, if accepted and taken to its logical conclusion then the only remedy for him was to seek partition of the joint holding wherein it could be well established whether he still owns any share in the left-out holding or he had already sold his entire share or more than that. The appellant's plea that the private partition could not be recognised unless sanctioned by the Revenue Authorities is wholly misconceived and deserves to be rejected in view of the later decisions of this Court, especially the Division Bench judgment in **Harbhajan Singh's case [supra]**.

[24]. For the reasons afore-stated, I find that the questions of law proposed on behalf of the appellant do not actually arise for consideration. Finding no merit, this appeal is dismissed but no order as to costs.

August 26, 2015.
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(SURYA KANT)
JUDGE