

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

Regular Second Appeal No.3007 of 2009 (O&M)

Date of decision: 4.6.2015

Ram Saran and others

... Appellants

Versus

Balkishan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.N.K.Joshi, Advocate,
for the appellants.

Ms.Somiya Singh, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This is plaintiffs' appeal against the judgment and decree of the learned Additional District Judge, Nawanshahr passed on 10th March, 2009 allowing the appeal and reversing the judgment and decree of the learned Civil Judge (Senior Division), Nawanshahr dated 15th February, 2006.

2. The plaintiff filed a suit for declaration to the effect that they are owners to the extent of 3/4th share in the land measuring 7K-11M and ½ share in the land measuring 2 Kanals in Khewat and Khatauni as described in the suit papers.

3. Mr.Joshi learned counsel for the plaintiffs states his case as follows : -

4. The plaintiffs' case is that the land measuring 7K 11M as per *fard* for the year 1960-61 was the ownership of Jagan Nath defendant No.1 and Ram Rakha son of Hira Ram. Jagan Nath had $\frac{1}{4}$ share and Ram Rakha had $\frac{3}{4}$ share in the suit property. On the death of Ram Rakha, the plaintiffs succeeded to the share of Ram Rakha. Defendants 2 to 8 wrongly claimed that they are owners of suit land and it is said that Mansu Sansi, their predecessors-in-interest purchased this land from Jagan Nath, defendant-1 whereas defendant-1 was only the owner of $\frac{1}{4}$ share in the land and the remaining land measuring $\frac{3}{4}$ share was ownership of Ram Rakha. So Jagan Nath could not have sold more than his own share. The land measuring 5K 2M was also the joint ownership of Jagan Nath, Ram Rakha, Bhagat Ram, Labhu Ram, Nanak Chand, Gurdas Ram, Roop Chand sons of Shri Ram. In this land, Jagan Nath had $\frac{1}{4}$ share, Ram Rakha had $\frac{1}{2}$ share, Bhagat Ram, Labhu Ram, Nanak Chand, Gurdas Ram, Roop Chand had $\frac{1}{4}$ share.

5. Defendant 1 had started professing that he is the sole owner of the land measuring 2K bearing rect. No.4, Killa No.20/4/2 as per *fard* for the year 1996-97 and further to assert that killa No.20/4 consists of 2 parts, 20/4/1 measuring 3K-2M and 20/4/2 of 2 K. Jagan Nath had only $\frac{1}{4}$ share in killa No.20/4 and Ram Rakha had $\frac{1}{2}$ share and defendants 9 to 13 had $\frac{1}{4}$ share whereas defendant-1 claims that he is recorded as joint owner in the suit land and partition has already been ordered by revenue courts and sanad partition has already been prepared and warrant of possession only remains to be issued.

6. Defendant-1 claims that he sold his land in accordance with his share. In fact, Jagan Nath had $\frac{1}{4}$ share, Ram Rakha had $\frac{1}{4}$ share, Sadhu Singh had $\frac{1}{4}$ share, Bhagat Ram, Labhu Ram, Nanak Chand, Roop Chand, Gurdas Ram all had a total of $\frac{1}{4}$ share. Sadhu Singh died unmarried and his share is alleged to have passed on to Ram Rakha, hence Ram Rakha became the owner of $\frac{1}{2}$ share in the land. However, due to miscalculation, the plaintiffs claimed $\frac{3}{4}$ share instead of $\frac{1}{2}$ share. Defendants No.2 to 8 are wrongly claiming that they are owners of the suit land stating that Mansu Sansi, their predecessors-in-interest purchased the land from defendant-1. Defendant-1 had only one fourth share in the suit land and as such could not have sold more than his share. Thus, any sale made by defendant-1 in excess of his share is not binding on the rights of the plaintiffs.

7. On the other hand, the case pleaded by Ms.Samiya Singh, learned counsel appearing for the respondents is that defendant-1 executed a gift deed in favour of Bhagwanti widow of Telu Ram on 1st March, 1962. The mutation of inheritance was sanctioned in favour of Bhagwanti being mutation No.2818 Ex.PA. The mutation was not challenged by the plaintiffs in any proceedings including in the present suit. On 31st December, 1964, Bhagwanti executed a sale deed in favour of one Kishan Singh, an outsider, and mutation was sanctioned his favour bearing mutation No.2966 Ex.D2. This mutation has also not been challenged in court. On 11th January, 1966, Kishan Singh-vendee initiated partition proceedings with respect to the suit land. The partition proceedings culminated in a *Sanad Taksim* in which all the parties were present and represented. Based on the said partition, the mutation was sanctioned in favour of Kishan Singh in terms of the share in

the earlier joint property and he came into possession of his partitioned share whereby mutation was sanctioned in his favour on 6th May, 1966. This was mutation No.3016 Ex.D4 which is also not under challenge in the suit.

8. The appellants, the plaintiffs in the suit, filed an appeal before the Collector which was dismissed and the partition was upheld. Their further appeal before the Financial Commissioner (Revenue) failed. On 22nd December, 1966, a suit for pre-emption was filed by defendant-1 against Kishan Singh which was decreed in his favour on payment of preemption money in a sum of ₹ 6500/-. Warrants of possession were also issued in favour of defendant-1. On 7th May, 1967, mutation No.3060 was sanctioned in favour of defendant No.1 Ex.D6 which has also not been challenged by the plaintiffs. On 17th November, 1976, the defendants had executed a registered sale deed in favour of one Mansu Sansi, the predecessor-in-interest of defendants 2 to 8. On 12th February, 1977, mutation No.3486 was sanctioned based on the sale deed Ex.D5. This mutation has also not been challenged. Parties went to trial on the following issues : -

1. Whether plaintiffs are entitled to declaration as prayed for ? OPP
2. Whether this Court has got no jurisdiction not to try and decide this suit? OPD
3. Whether the suit is bad for non joinder of necessary parties? OPD
4. Whether plaintiffs are barred by their acts and conducts to file this suit? OPD
5. Relief.

9. The evidence was led by both the parties, oral and documentary whereafter they closed their evidence. Learned trial court decreed the suit on 15th February, 2006 which has been reversed by the first appellate court on 10th March, 2009 and the suit stands dismissed. Hence the regular second appeal.

10. The facts as noticed by the court of first appeal arising out of pedigree table are these; one Heera Ram had three sons namely Basant Ram, Ram Rakha and Sadhu Ram. Ram Rakha had four children, i.e., Ram Saran, Ganga Bishan, Ram Murti and Ram Dass. The land measuring 7K-11M as described was owned by Jagan Nath-defendant-1 and Ram Rakha son of Heera Ram. Jagan Nath son of Basant Ram had $\frac{1}{4}$ th share and Ram Rakha had $\frac{3}{4}$ th share in suit property. On the death of Ram Rakha, the plaintiff succeeded to his share. Defendants 2 to 8 started to cast clouds on the title to the suit land claiming that Mansu, their predecessor-in-interest had purchased the land from Jagan Nath. It was stated that Jagan Nath was only owner of $\frac{1}{4}$ th of the land and the remaining $\frac{3}{4}$ th share was of Ram Rakha son of Heera Ram and thus, if any sale by Jagan Nath in favour of Mansu is proved, then the same is not binding on them since Jagan Nath could not sell more than $\frac{1}{4}$ th share and, therefore, they be declared owners of $\frac{2}{4}$ th share of 7K-11M of land.

11. The other parcel of land involving 5K-2M land is stated to have been the joint ownership of defendant-1-Jagan Nath, Ram Rakha son of Heera Ram, Bhagat Ram, Labhu Ram, Nanak Chand, Gurdas Ram, Roop Chand sons of Shri Ram. It is pleaded that in this land, Jagan Nath had $\frac{1}{4}$ th share as well while Ram Rakha, from where the plaintiffs claimed $\frac{1}{2}$ share,

Bhagat Ram, Labhu Ram, Nanak Chand, Gurdas Ram and Roop Chand had 1/4th share. Jagan Nath started claiming to be sole owner of 2K which was wrong. The plaintiffs claimed ownership and possession of suit land to the extent of ½ share in these 5K-2M of land.

12. Two registered instruments were involved which appear to have settled rights in favour of the respondents. This was a gift deed dated 1st March, 1962 and the sale deed dated 31st December, 1964, upon which, mutations stand sanctioned. The total land holding was 56K between Ram Rakha and Sadhu Ram sons of Heera Ram, their share being 28K each. Jagan Nath son of Basant Ram gifted 14K of land to Bhagwanti widow of his brother Telu Ram who further sold the land to Kishan Singh which land Jagan Nath pre-empted, paid the pre-emption money and thus, the property reverted back to Jagan Nath. Kishan Singh was thereafter removed from the property picture. This was in the year 1967, which is rather long ago. It may be reiterated that Kishan Singh came upon the land in December, 1964 on purchase from Bhagwanti vide sale deed. He initiated partition proceedings in January, 1966 and was allotted his share in May, 1966. Rights by way of partition had become final qua the parties including Kishan Singh.

13. It was later in December, 1966 that the pre-emption suit was brought against the defendant-Kishan Singh by which the property reverted back to Jagan Nath-defendant-1 by decree. However, the partition proceedings had culminated in the presence of all the parties including outsider Kishan Singh. When the property reverted back to Jagan Nath, he was left with 14K, i.e., ½ of his original share since by then he had sold the other half to Mansu. Therefore, the equilibrium was not disturbed and the

ratio of suit land between Ram Rakha and Sadhu Ram remained 28K each with reference to total land holding of 56 Kanals of land.

14. What the plaintiffs seek to propound in their favour was a will and last testament allegedly executed by testator Sadhu Ram son of Heera Ram in favour of Ram Rakha. It may be noted that Ram Rakha claimed property under the Will of Sadhu Ram had died unmarried and issueless. However, the factum of testamentary Will executed by Sadhu Ram or that he had died issueless is not pleaded in the plaint and, therefore, the court *a quo* held that no amount of evidence can be led to prove the existence of the Will. What we are left with at the end of the day are the partition proceedings which culminated several decades before the suit was brought on 8th August, 2000 when rights stood crystallized.

15. Mr.Joshi would use as a linchpin of his argument that defendant-1 contested the suit, filed the written statement but did not step into the witness box to face cross-examination and, therefore, his affidavit by way of examination-in-chief has not become evidence. This may be true as a fact but is of hardly any legal consequence when in the written statement he had submitted that he was recorded in the revenue papers as joint owner in the suit land and the partition had already been ordered by the revenue Court and *Sanad* partition had already been prepared and warrants of possession only remained to be issued. He had also pleaded that the plaintiffs have got no concern with the share of the answering defendants. Even in their cross-examination, the plaintiffs admitted that the partition had taken place between the parties. Once defendant-1 pleaded that the partition had taken place between the parties long ago and mutations have been

sanctioned accordingly and each had come into physical possession of the shares as divided between the parties by the mode of partition adopted, then only the proceedings before the revenue Court became material and no amount of oral evidence was required to prove the record of the partition proceedings where both warring sides and their predecessor-in-interest had participated. It is only the testamentary Will which could have disturbed the balance but that was neither pleaded nor could be allowed to be proved by admitting evidence. Neither the gift deed nor the sale deed, nor the mutations sanctioned decades ago, have been questioned by the plaintiffs in the present proceedings. The partition proceedings must necessarily come to an end when the instrument of partition has been drawn up. Section 118 of the Act requires the Revenue Officer to decide all questions as to the property to be divided or the mode of partition to be applied in separating shares by metes and bounds etc. When the question of title is raised the Revenue Officer has option to either leave it for determination before the civil court or decide it itself which power the Act affords to him in Section 117 of the Act. The mutations based on registered instruments have a presumption of truth attached to them although mutations by themselves have little value in determining title to property.

16. The Court *a quo* noticed on perusal of the plaint that respondents 1 to 5 pleaded that Ram Rakha had 3/4th share in the property in dispute but while arguing before the trial Court, his learned counsel submitted from thin air that Sadhu Ram son of Heera Ram died issueless and his property came to the share of Ram Rakha by testamentary succession.

This was a concocted story which the first appeal Court refused to accept as

true. There was failure on the part of respondents 1 to 5 to prove as to how much land they had inherited. There was absence of pleadings as to how much land was owned by Heera Ram and how much land was inherited by his four sons. These points have been left blank and cannot by reason of it come in aid of the plaintiffs.

17. To support his case Mr.Joshi has relied on a selection of judgments, i.e., of this Court in **Raja Ram alias Rajender v. Tehsildar-cum-Assistant Collector, Hissar**; 2001 (2) RCR (Civil) 739 [re: co-sharers not impleaded and unless and until the question of title was decided, the mode of partition should not be approved], **Rangi (Dead) through LRs v. Karam Singh**; 2004 (4) RCR (Civil) 255 and of the Supreme Court in **Vidhyadhar v. Mankikrao and another**; AIR 1999 SC 1441 on the point that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. As already noticed, if defendant 1 did not step into the witness box personally to support his written statement he was supported by judicial record of partition proceedings and documentary evidence in complete defence to the suit which were duly produced on record by appropriate steps. Then there was nothing much which could be said in the witness box or to be cross examined except to take the main and solid defense that suit property stood partitioned years ago and which proceedings had attained finality. Title or share in property was no longer a matter in issue.

18. Defendant-1's right, title and interest were guarded by the revenue record going back to the sixties. In this conspectus of facts, I need

hardly say the learned Additional District Judge, Nawanshahr rightly did not agree with the opinion of the learned trial Court on evidence and dismissed the appeal. I have no reason to take a view different from that of the learned Additional District Judge, Nawanshahr and would dismiss this appeal since I fail to see any question of law, much less substantial, arising in the second appeal side sufficient to warrant interference.

19. Appeal dismissed.

(RAJIV NARAIN RAINA)
JUDGE

June 4, 2015

Paritosh Kumar