

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3932 of 2009 (O&M)

Date of Decision: 08.05.2015

Charanjit Kaur and others

..... Appellants

Versus

Sukhdev Singh and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Handa, Advocate,
for the appellants.

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

RAJIV NARAIN RAINA, J.

This second appeal came up for motion hearing for the first time on November 25, 2009 when the lower court records were summoned for January 27, 2010. Thereafter, this appeal has meandered through 28 adjournments without the appellants having addressed effective arguments for an admission of the appeal so far. On March 30, 2015 i.e. on the 28th adjournment, I accepted the request for another adjournment on account of counsel being in personal difficulty but directed that on the adjourned date, this Court would expect that the matter would be argued failing which it would entail dismissal of the appeal. The Court had requested learned counsel appearing in second appeals in terms of note in cause list for Court room No.21 as follows:-

"Learned counsel are requested to supply in regular second appeals (motion and regular) (1) Synopsis of facts including admitted facts after exchanging with opposite counsel, (2)

Disputed facts (3) Nature of suit and relief, (4) Part of evidence beyond pleadings, (5) Findings on issues beyond admissible evidence, (6) Evidence/Pleadings not considered, (7) Error in reasoning, (8) Judgments in support, in the shortest possible form to save time at the hearing and disposal of appeals without needless adjournments. Such synopsis will be taken on record, if not filed in advance with the memo of appeal."

But those were not filed even though it was only a request which would help save time at the hearing. The facts in brief are that one Tehal Singh was owner of 327 kanals 15 marlas of land. He left behind his widow Bhag Kaur and sons Malkiat Singh and Sukhdev Singh. After the death of Bhag Kaur on November 21, 1983 the land devolved upon the legal heirs but disputes arose regarding the validity and legality of two testamentary Wills dated November 17, 1987 and November 19, 1983 allegedly executed by Bhag Kaur and propounded by the parties. This sparked off the litigation started by Charanjit Kaur widow of Sukhdev Singh and her three sons Amarjit Singh, Surinder Pal Singh and Ajit Singh [when Surinder Pal Singh and Ajit Singh were minors represented through their mother]. The litigation was brought against Malkiat Singh on the basis of the Wills with respect to the property left behind by Bhag Kaur. Two sons of Malkiat Singh, namely Rajinderpal Singh and Kirpal Singh filed Suit No.283 of 16.11.1984 against Charanjit Kaur widow of Sukhdev Singh and her sons and their father Malkiat Singh and uncle Sukhdev Singh. The suit was dismissed by the trial Court vide judgment and decree dated May 27, 1986. The trial Court rejected both the Wills which were held not to be proved in accordance with law. The chapter did not end there.

Aggrieved by the judgment and decree dated May 27, 1986

defendant Charanjit Kaur and her sons went in appeal against Malkiat Singh and his sons and Sukhdev Singh and challenged the findings of the trial Court with respect to the testamentary Wills. During the pendency of the appeal, Malkiat Singh sold the property vide four sale deeds. It was in appeal that the litigation was settled through compromise Ex.P-21 and the parties divided the land as per the terms of the compromise amongst themselves. In the compromise, terms were settled with respect to possession of the respective shares and none had any complaint against each other. The parties had agreed to in the compromise that Charanjit Kaur widow of Sukhdev Singh and their children would get 16 kanals etc. share to which Malkiat Singh had no objection. It was also settled inter parties that mutation be sanctioned as per the agreement. Accordingly, Civil Appeal No.337 of 22.07.1986 was decreed and the judgment and decree of the lower court was modified in terms of the compromise.

It will be seen that it was due to the terms of the compromise Ex.P-21 that the shares of the vendees were reduced in the case of Sukhdev Singh by 2 kanals 11 marlas and Balwant Singh by 15 marlas and both were not parties in Civil Suit No.283 of 16.11.1984 or to the judgment and decree dated May 19, 1989 based on the compromise. Therefore, it was urged that the compromise was not binding on their rights and plaintiffs would continue to be governed by the terms of the sale deeds. The Court *a quo* recorded that Malkiat Singh was owner of 109 kanals 15 marlas of land. Bhag Kaur had sold 7 kanals 3 marlas of land and she was left with 102 kanals 5 marlas of land. The land sold by Malkiat Singh vide the four sale deeds totalled 32 kanals 4 marlas which is much less than the land owned by

him. Malkiat Singh did not sell the share of Charanjit Kaur etc. to respondent Nos.1 & 2 and hence the doctrine of *lis pendens* was not applicable to his share of land, therefore, the Court reasoned that the land sold by respondent No.3 to respondent Nos.1 & 2 is outside the purview of the land involved in the compromise and the subsequent judgment and decree passed on the basis of the compromise. Besides, in the compromise, the total land was not included.

The learned Additional District Judge, Ludhiana in his judgment and decree dated August 31, 2009 did not agree with the contention based on the principle that every co-sharer was owner of every inch of land until same was partitioned and found that such an argument had no force because the compromise Ex.D-1 settling disputes between the parties had rearranged the disputed property within the family members enabling them to come into possession of specific khasra numbers and shares of land. When all the parties to the suit were in possession of their respective shares in terms of the compromise decree, then defendants/appellants Charanjit Kaur and her children could not raise the plea that the specific portion of land could not be sold by Malkiat Singh to Sukhdev Singh and Balwant Singh who were co-villagers. The sale deeds registered by Malkiat Singh are prior to the compromise dated May 12, 1989. The question whether the sale was hit by the principles of *lis pendens* was wrong and could not be applied to the case in hand. The principle could at best be applied qua the land which had fallen to the share of Bhag Kaur which was purchased by the plaintiffs from Malkiat Singh which had no connection whatsoever with the property owned by Bhag Kaur. The plaintiffs were not parties to the compromise and

their rights could not be effected by the decree and thus they were not bound by the decree dated April 11, 1990. There was no defect in the title. The defendants' appeal was dismissed and rightly so by the learned Additional District Judge, Ludhiana.

It would be relevant to narrate the facts which brought the three vendees/plaintiffs to institute the present suit.

Malkiat Singh – defendant No.5 was owner of suit property described at Sr. Nos. A to C in the head note of the plaint. He transferred certain parcels of land through registered sale deeds in favour of the plaintiffs, jointly and severally, vide sale deeds dated May 17, 1985, July 03, 1986, October 07, 1986 and June 01, 1988 and possession was delivered at the spot to the vendees running from the date of registration. In the meantime, some of the vendees further sold parts of the land onward i.e. Amarjit Singh s/o Gajjan Singh sold 3 kanals of land bought from Malkiat Singh through sale deed dated May 17, 1985 to Balwant Singh plaintiff vide sale deed dated December 10, 1986. Mutations on the basis of sale deeds effected by Malkiat Singh and Amarjit Singh were sanctioned in favour of plaintiffs as borne out by the Jamabandi for the year 1983-84. However, with respect to sale deed dated October 07, 1986 supra it is relevant to mention that Malkiat Singh – defendant No.5 sold property to Balwant Singh – plaintiff on the basis of Hissedari and thus the mutation has been effected on its basis in 'Khana Kasht'. In this manner, the three plaintiffs became owner of land of different measurements mentioned in the pleadings to which no reference is essential in deciding this appeal. The mutations were also reflected in the next following Jamabandi for the year 1988-89.

Though the plaintiffs were in possession of land in accordance with their respective areas yet the khatas remained joint since regular partition had not taken place between the stakeholders. This is how the plaintiffs filed for partition by application in the revenue court of the Assistant Collector, Ist Grade, Jagraon instituted on August 07, 1992 on the strength of the Jamabandi for the year 1988-89. It transpired that during the pendency of the partition proceedings, Jamabandi for the year 1993-94 was prepared. It was on obtaining the copy of the Jamabandi that plaintiffs discovered that the areas of their shares had been reduced. Part of the land the plaintiffs had bought together or separately from Malkiat Singh stood reverted in the names of defendant Nos.1 to 4 who were shown to be sole owners of the eliminated khasra numbers in the latest Jamabandi. It was then the plaintiffs or so that they came to know that during litigation pending *inter se* defendant Nos.1 to 4 with respect to the inheritance of Bhag Kaur who died in 1983 that a compromise was effected between defendant Nos.1 to 4 in appeal, but in that compromise the whole land was not included. The appeal was disposed of in terms of the compromise effected on May 12, 1989. Defendant Nos.2 to 4 are the sons of late Sukhdev Singh and defendant No.1. The family tree confirms that Bhag Kaur left behind Sukhdev Singh and Malkiat Singh. Their rights during the life time of Bhag Kaur were undisputedly $1/3^{\text{rd}}$ each. While the plaintiffs claimed ownership from Malkiat Singh by sale, the legatees of Sukhdev Singh filed the Civil Suit for declaration on September 11, 1995 in the Court of the Additional Civil Judge (Senior Division), Jagraon. On the basis of the compromise Ex.P-1 Charanjit Kaur widow of Sukhdev Singh son of Tehal Singh obtained the

decree dated April 11, 1990.

This Court finds no cause to interfere in second appeal as there is no error in the reasoning of the Courts below. The compromise Ex.P-21 could not have varied the recitals in the sale deed and such a compromise cannot alter the boundaries described in the deed of conveyance. The compromise cannot affect the rights of Sukhdev Singh and Balwant Singh who are purchasers from Malkiat Singh of land for valuable consideration. The plaintiffs have stepped into the shoes of Malkiat Singh.

As an aftermath of the decree, further proceedings in partition may continue and both parties would have their say before the revenue court in accordance with law. The rights of both the parties will be protected in partition proceedings as have been declared by the Civil Court with respect to the respective shares in the disputed property.

Accordingly, the appeal to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

08.05.2015

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