

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.518 of 2010 (O&M)

Date of decision: 21.09.2015

Jagmohan Singh and others

..... Appellants

versus

Mohinder Singh and another

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Puneet Kumar Jindal, Senior Advocate with
Mr. Parambir Singh, Advocate for the appellants
Mr. Sudeep Mahajan, Advocate for the respondents

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Impugned in the present regular second appeal is the judgment and decree dated 10.12.2009, passed by the learned Additional District Judge, Jalandhar, affirming the judgment and decree dated 12.12.2006, passed by the learned Civil Judge, Junior Division, Jalandhar, vide which the suit of the plaintiffs was decreed for declaration to the effect that the plaintiffs are exclusive owners of the suit land on the basis of the sale deeds dated 26.8.1983 and 22.2.1982 Ex.P1 and Ex.P2 and are in possession of the same except khasra No.822/1 and 823/2. As a consequential relief, the defendants were restrained from denying the rights and title of the plaintiffs over the suit property in any manner and decree for possession of area measuring 0K 19 marla out of khasra No.822/1

and 823/2 of the suit property was also passed in favour of the plaintiffs and against the defendants.

The short controversy between the parties is that according to the plaintiffs Mohinder Singh and Daljit Kaur, they had purchased the suit land out of khasra No.822/1(0-2), out of khasra No.823/2(0-10), out of khasra No.499(0-18), out of khasra No.643/1(0-18), out of khasra No.642(0-5) through sale deed dated 26.8.1983. The land is situated in village Khurdpur, Tehsil and District Jalandhar. Through another sale deed dated 22.2.1982, land out of Khasra No.643/2(0-2), out of khasra No.643/1(0-9), out of khasra No.644, 822/1, 823/2, 499 and 642, bearing 1/3rd share out of land measuring 9 kanal 12 marla i.e. 3 kanal 4 marla was purchased from Ajmer Kaur widow of Kartar Singh and Gurmit Kaur d/o Kartar Singh. Defendants have no concern with the property in dispute in any manner. Their predecessor was licensee of the original owner and are denying title of the plaintiffs and threatening to dispossess the plaintiffs.

On the other hand, in the written statement, the stand of the defendants is that originally, Kartar Singh was the owner of the entire suit land. Said Kartar Singh constructed a *Kothi* in the portion of his land, which was also four walled by him. Kartar Singh sold the said *Kothi* to Tara Singh, vide registered sale deed dated 10.6.1961. After the death of Tara Singh, his legal heirs Bachan Singh, Pritam Singh and Mehra Singh became the absolute owners of the said *Kothi*. Ajmer Kaur, Gurmit Kaur and Surjit Kaur had no right or interest in the property in question. Therefore, they could not sell the

same. The allegation that defendants are threatening the plaintiffs to take forcible possession was also denied. From the pleadings, following issues were framed:-

- 1. Whether the plaintiff is owner of the suit property? OPP*
- 2. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 3. If issue No.1 and 2 are proved then, whether the plaintiff is entitled for possession of the suit property? OPP*
- 4. Whether the defendant is owner of the part of suit property vide sale deed dated 10.5.61? OPD*
- 5. Whether plaintiff has no locus standi to file the present suit? OPD*
- 6. Relief*

Lower Court took up issue No.1 and 4 together and decided the same against the defendants. Issue No.2 and 3 were also decided against the defendants. Onus to prove issue No.5 was placed on defendants but same was not pressed during the course of arguments so it decided in favour of the plaintiffs and consequently impugned judgment and decree was passed.

The findings were affirmed by the learned Additional District Judge, Jalndhar vide the judgment and decree dated 10.12.2009.

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

Out of the law points, mentioned in para No.15 of the

grounds of appeal, the following substantial law point is framed for disposal of the present appeal:-

“Whether the findings recorded by both the Courts below are perverse, against the record and based on erroneous interpretation of the documents and the law?”

The perusal of the lower Court judgment shows that the lower Court has observed that Mohinder Lal, Kanungo (PW3), appointed as Local Commissioner has reported that a house was found existing on 19 marlas of land, which as per demarcation falls in khasra No.822/1 measuring 3 marla and 823/2 measuring 16 marlas. However, in the sale deed put up by the defendants dated 10.5.1961, the land is mentioned as 14 marlas. The Local Commissioner further reported that as per revenue record, said khasra nos. are recorded to be under the ownership of Mohinder Singh and his wife Daljit Kaur. The lower Court also observed that no mutation of the said land was got sanctioned by Tara Singh or his successor and that an effort to get the mutation sanctioned failed as coming out from the document (Ex.P5). The lower Court heavily relied upon the fact that the defendants failed to get the mutation sanctioned regarding the said sale deed (Ex.D2) and held that in fact the possession of the defendants over the land bearing khasra No.822/1 and 823/2 is an encroachment.

The contention of learned counsel for the defendants is that the demarcation was done by taking area as 207 sq.ft. per marla, whereas the area mentioned in the sale deed of the defendants is to be calculated as 272 sq.ft. per marla. Before the

learned Additional Sessions Judge also, the heavy reliance was placed on the fact that the defendants had failed to get the mutation sanctioned, on the basis of the said sale deed dated 10.5.1961. The mutation was rejected vide order (Ex.P5) dated 14.8.1975. It was also stated that as per sale deed, the area mentioned is 14 marlas. It was also noticed that killa Nos. and khasra Nos. are not mentioned in the sale deed. The first appellate Court also observed as under:-

“No doubt sale deed dated 10.5.1961 Ex.D2 exists in favour of the appellants, but a mere existence of this sale deed does not automatically make them co-sharers in the suit land. In order to qualify themselves as co-sharers, an effort should have been made by the appellants to trace out khasra numbers of the land underneath the above said kothi, which is subject matter of the sale deed Ex.D2.

In this way, it is clear that the dispute is regarding identity of land mentioned in the sale deed in favour of the plaintiff and the effect of sale deed in favour of the defendants. The sale deed set up by the defendants is dated 10.5.1961, which is prior in date. The sale deed was executed by original owner Kartar Singh in favour of Tara Singh. Kartar Singh admittedly was predecessor in interest of the subsequent vendors namely, Ajmer Kaur and Gurmit Kaur, who happen to be wife and daughter of said Kartar Singh.

Now, the examination of sale deed (Ex.D2), which is in Urdu and the Punjabi translation of which is Ex.D3 shows that Kartar Singh through the sale deed dated 10.5.1961 is recorded to have

sold one property situated in village Khurdpur, Tehsil and District Jalandhar, which is in the shape of constructed *Kothi* of single storey with the following boundaries:-

East – Vacant plot of Dayal Singh

West – Vacant plot of Rajwant Singh etc.

North – Land of Smt.Harbhajan Kaur

South – GT Road towards Hoshiarpur

The bearing No.253. Area is mentioned as 14 marla. The said *Kothi* was sold for Rs.4000/- in the year 1961, along with the land underneath. The sale deed was duly registered. In the sale deed khasra Nos. of the land are not mentioned. A copy of the jamabandi Ex.P3 mention the land owned by the successors of said Kartar Singh, wherein all the khasra nos. are also mentioned. The land of khasra No.642 is mentioned as *gair mumkin chah*. Other land is mentioned as agricultural land. The khasra nos. on which *Kothi* is found constructed are mentioned as *gair mumkin abadi*, whereas the other land is mentioned as agricultural land.

Now the sale deed (ExP1), executed by Ajmer Kaur widow of Kartar Singh and Gurmit Kaur daughter of Kartar Singh shows that they sold the land measuring 2 kanals 13 marlas in favour of Mohinder Singh son of Pritam Singh. 02 marla out of khasra No.822/1(0-3), 10 marlas out of khasra No.823/2 (0-16), 18 marlas out of khasra No.499(11-7), 18 marlas out of khasra No.643/1(4-11), and 5 marla out of khasra No.642(0-7). The sale deed is dated 26.8.1983. It is also duly registered. Through another sale deed Ex.P2 dated 12.8.1982, said Surjit Kaur daughter of Kartar Singh

sold the land measuring 3 kanals 15 marlas i.e. 2 marla out of khasra No.432 (2-13), 9 marla out of Khasra No No.643/1(4-11) and 1/3rd share equal to 3 kanal 4 marla out of khasra No.644 (6-19), 822/1 (0-3), 823/2(0-16), 499(1-7), 462(0-7), total 9 kanal 12 marlas.

The report of the Local Commissioner, Mohinder Lal Kanungo shows that he took the measurement of the disputed property and found that an old *Kothi* is lying constructed at area measuring 0 kanal 19 marla, which is in possession of the defendants. The area of the *Kothi* is comprised in khasra No.822/1 (0-3) and 823/2 (0-16). However, it is recorded that as per the revenue record, it is owned by the plaintiffs. The report of the Local Commissioner is Ex.PW3/B. Now the statement of Mohinder Lal Kanungo (PW3) shows that he recorded the area of *Kothi* to be 19 marla taking the measurement on the basis of 207 sq.ft. per marla. He admitted that in the villages, each marla consists of 272 sq.ft. He could not tell that if the measurement is taken on the basis of 272 sq.ft. per marla then whether the area of the *Kothi* comes to 14 marlas or 19 marlas. In this way, the catch in the report of the Kanungo is that he took the measurement taking the area of each marla to be 207 sq.ft., whereas according to the defendants area of per marla is 272 sq.ft.

Now, the further question would arise as to what is the effect of non-sanctioning of the mutation? I am of the view that mutation does not confer any title. Title is conferred by the sale deed and if sale deed is proved then non-sanctioning of mutation becomes irrelevant. In the sale deed (Ex.D2), khasra nos. were not

mentioned. Now further question would arise as to whether in the absence of khasra nos., this Court can conclude as to which khasra no. was sold through the said sale deed.

Section 91 of the Indian Evidence Act 1982 excludes the oral evidence by the documentary evidence. However, Section 92 is an exception, which provides as under:-

“Section 92. Exclusion of evidence of oral agreement.- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso 1 to 5 xxx xxx xxx xxx

Proviso (6).--Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

Therefore, it is permissible to find out as to which area was sold through the sale deed (Ex.D2). Ex.D2 mentioned about a *Kothi* existing on 14 marlas. It is not shown that the originally Kartar Singh owned some other land in which *Kothi* was constructed. Copy of the jamabandi Ex.P4 shows the land which was earlier owned by Kartar Singh and then succeeded by the vendors and the present plaintiffs. Therefore, it has to be concluded that the *Kothi* was sold out of the land owned by original owner Kartar Singh. *Kothi* is an old

Kothi showing that it is existing since long. As per report of the Kanungo it exists on khasra Nos.822/1 and 823/2. The possession is with the defendants. The boundaries of the *Kothi* were also mentioned. It is not denying fact that towards southern side of said khasra there is Jalandhar-Hoshiarpur GT road. Therefore, if the identity of the said *Kothi* is established, it comes out that it is on khasra No.822/1 and 823/2. The Kanungo has conducted the demarcation taking the measurement per marla to be 207 sq.ft. However, he has admitted that in the villages, the measurement is as per 272 sq.ft. per marla. Therefore, if the measurement is taken to be 272 sq.ft. per marla, the area will come approximately around the same as mentioned in the sale deed Ex.D2. The lower Courts has failed to appreciate this fact. Lower Courts has also failed to appreciate that the mutation does not confer any title and undue importance is given to the said fact, which is not appreciable. If there is omission of khasra Nos. in sale deed, the Court could always record the findings of facts as to whether the sale was out of the disputed khasra nos. since the boundaries of the said *Kothi* are mentioned in the sale deed Ex.D2.

Learned counsel for the defendants has argued that in the year 1961 the consolidation of land holdings was under way and therefore, khasra nos. were not mentioned. However, the boundaries clearly indicate that the *Kothi* now in possession of the defendants was sold. The report of the Kanungo has established that *Kothi* is in khasra No.822/1 and 823/2. Therefore, it has to be concluded that the *Kothi* in possession of the defendants, was sold by its original

owner Kartar Singh to Tara Singh and after the death of Tara Singh, it was succeeded by the defendants.

Section 8 of the Transfer of Properties Act is not applicable in this case as the vendor had no title to sell the land to the plaintiffs. It is further noted that through the sale deed ExP2 and Ex.P3, no constructed *Kothi* was sold to the plaintiffs.

Once, it is found that Kartar Singh had sold the area of the *Kothi* in the year 1961, the successors of Kartar Singh namely, Ajmer Kaur and Gurmit Kaur were left with no title in the said *Kothi*, which they could sell to the plaintiffs vide sale deeds dated 22.2.1982 and 26.8.1983. In this way, I find that the findings recorded by the lower Courts are perverse and based on mis-reading of the evidence and lack of the proper appreciation of material on file. Once, it is found that Kartar Singh had sold the area of the *Kothi* along with the constructed *Kothi* to Tara Singh, predecessor of the defendants, the successors of Kartar Singh could not sell the same to the plaintiffs and consequently, vide sale deeds dated 22.2.1982 and 26.8.1983, no title was conferred on the plaintiffs regarding the said *Kothi*.

Accordingly findings of the lower Court to that extent are set aside and the decree for possession and injunction granted by the Courts below along with the declaration granted regarding the area of the *Kothi* mentioned above is set aside. Here it is added that there is no dispute regarding the remaining land purchased by the plaintiffs.

It being so, the present appeal is allowed. The impugned judgment and decree dated 10.12.2009, passed by the learned

Additional District Judge, Jalandhar and the judgment and decree dated 12.12.2006, passed by the learned Civil Judge, Junior Division, Jalandhar, qua the land bearing khasra No.822/1 and 823/2 on which an old *Kothi* is lying constructed are set aside and the Suit of the plaintiff qua the *Kothi* in question stands dismissed.

In view of disposal of the appeal, all the pending applications also stand disposed of.

21.09.2015

gk

**(Kuldip Singh)
Judge**