

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

RSA No.1604 of 2012 (O&M)

Date of decision: 05 .12.2015

Avtar Singh and others

...Appellants

versus

Darshan Singh and others

... 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. Sunny Saggar, Advocate
for the appellants.

Mr. Subhash Aggarwal, Advocate
for respondents No.1 to 3.

AMIT RAWAL J.

C.M.No.426-C of 2014

The application is allowed, subject to all just exceptions.

Document, Annexure P-1 (Colly) is taken on record.

RSA No.1604 of 2012 (O&M)

The appellant-plaintiffs are in Regular Second Appeal against the judgment and decree rendered by the lower Appellate Court, whereby, the judgment and decree of the trial Court decreeing the suit for declaration, has been set aside.

Mr.Sunny Sagar, learned counsel appearing on behalf of the appellant-plaintiffs submits that the plaintiffs had filed the suit for declaration to the effect that they are joint owners of the land measuring 15

kanals 5 marlas as per the jamabandi for the year 1995-96 situated at Jagpur, HB No.423, Tehsil and District Ludhiana to the exclusion of defendants and for declaration that alleged sale deeds dated 02.01.1996, 13.08.1991 and 27.05.1992 executed by defendants No.4, 9 and 10, being null, void and not binding upon the legal rights as the aforementioned sale deeds have been executed on the basis of the wrong entry in the revenue record by branding the sellers as "Fard Badar" and also sought the permanent injunction restraining the defendants in any manner illegally and forcibly/dispossessing, except in due course of law. He further submitted that Gurdial Singh, grandfather of the plaintiffs had filed a suit for pre-emption against Arjan Singh-deceased, grandfather of defendants No.5 to 9, father of defendant No.4 and deceased Nirmal Singh and on the basis of the compromise, the matter was remanded to the Consolidation Officer vide order dated 25.07.1967. The Consolidation Officer vide order dated 25.07.1967, held that parties are entitled to the land measuring 12 kanals 4 marlas in favour of Arjan Singh and the balance ancestral land was held in the ownership of the plaintiffs. However, deceased Arjan Singh applied for mutation of the aforementioned land and the said mutation proceedings vide order dated 29.05.1978 were dismissed by the Assistant Collector Grade I and the same had attained finality. However, in the year 1991, in connivance with the revenue officials, the legal heirs of Arjan

Singh, i.e., Darshan Singh, father of defendants No.5 to 9 and his brother deceased Nirmal Singh and Lachhman Singh obtained Fard Badar of the land yet failed to get the decree of the Court affected within 12 years stipulated period. Fard Badar cannot foist upon the respondent-defendants ownership/title, thus, they could not sell the land vide aforementioned sale deeds. The plaintiffs had exclusive possession of the land measuring 8 kanals 18 marlas comprised of khasra No.40/4 out of total khata No.45-47 and filed the suit for permanent injunction, wherein, the trial Court granted the interim injunction which was confirmed against defendants No.1 to 3. Gurdial Singh deceased, grandfather of plaintiffs, had executed a registered and valid Will in favour of the plaintiffs regarding movable and immovable property. Since the defendants asserting in the claim of title, which necessitated them to file present suit. He further submitted that the trial Court on the basis of the oral and documentary evidence found that the alleged sale deed executed in favour of defendants No.1 to 3 by co-defendants on the basis of the alleged Fard Badar have rightly been set aside as not binding upon the rights of the plaintiffs but the lower Appellate Court has erroneously dismissed the suit on the ground that it was barred by law of limitation. As per Article 58 of the Indian Limitation Act, 1963, cause of action only arise when title is under cloud, in essence, mere entry of mutation in the name of a particular party would not furnish a cause of

action to file the suit. The suit was filed on 09.03.1999 and the mutation allegedly was affected in the year 1998. He further submits that the lower Appellate Court wrongly applied the provisions of Article 113 of the Indian Limitation Act, 1963. He further submitted that the limitation will not run from the commencement of execution of the sale deed but only from acquiring the knowledge. Moreover, for claiming the title in the property, there was no limitation. Admittedly, the plaintiffs were not party to the sale deeds.

The lower Appellate Court has further committed illegality and perversity in setting aside the well reasoned judgment and decree of the trial Court despite having mentioned in paragraph 13 that Fard Badar has been sanctioned in illegal manner. Once the lower Appellate Court has confirmed such opinion, there was no occasion for exercising the discretion under Section 96 of the Code of Civil Procedure. He further submitted that Arjan Singh was recorded as Gair Marusi in column No.5 in the revenue record, whereas, Gurdial Singh as owner, thus, the predecessor-in-interest of the defendant could accrue ownership, there had no valid title to pass on vide impugned sale deeds. He submitted that following substantial question of law arises for adjudication of the present appeal which reads thus:-

“Whether the lower Appellate Court has committed illegality and perversity in not appreciating the documentary evidence

on record being the last Court of facts and law?”

Mr. Subhash Aggarwal, learned counsel appearing on behalf of respondents No.1 to 3 submits that there is no illegality and perversity in the judgment rendered by the lower Appellate Court as the plaintiffs in plaint itself admitted that as per the compromise, Arjan Singh deceased was held entitled to land measuring 12 kanals 4 marlas, whereas, Gurdial Singh, predecessor-in-interest of respondents was held entitled to land measuring 3 kanals 1 marla. The act of sanctioning Fard Badar by the revenue authorities is not contrary to the existing facts and law, therefore, they cannot take the plea that Fard Badar was wrongly entered. The civil Court did not have the jurisdiction, whereby, plaintiffs could seek the rectification further, in case, the plaintiffs had any grievance by challenging the order under the provisions of Land Revenue Act. The defendants had purchased the land measuring 5 kanals 5 marlas, 1 kanal 10 marlas, 5 kanals 4 marlas vide sale deeds for a valuable consideration, after verifying the record, thus, they are bona fide purchasers. The suit ex facie was time barred as the same was filed on 09.03.1999, whereas, the last date sale deed was executed on 02.01.1996, therefore, no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

On going through the findings rendered by both the Courts

below, I am of the view that the appeal deserves to be allowed and the impugned judgment and decree of the lower Appellate Court is liable to be set aside for the following reasons:-

As per Para 7.2 of the Punjab Land Records Manual, it is the only Civil Court which has jurisdiction for ordering of correction in the revenue entry/Fard Badar. It is settled law that right to sue accrues only when the title is under cloud. In the instant case, the plaintiffs continue to be in possession of the property, therefore, mere entry of mutation in the name of defendants would not furnish any cause of action to the plaintiffs, till such time, defendants actually threatened to take forcible possession. Plaintiffs have categorically pleaded in the plaint that necessity arose to file the suit when the defendants threatened to dispossess them forcibly and particularly when they threatened to alienate the suit land, thus, in my view, the cause of action accrued from such threat, thus, the suit filed was within limitation. DW1-Ujjagar Singh and DW2-Tehal Singh have specifically deposed that the plaintiffs are in possession of the suit property. They further admitted that the property was ancestral property of the plaintiff and Arjan Singh got mutation regarding land measuring 15 kanals 5 marlas which was dismissed by the revenue authority.

I am of the view that entry in Fard Badar has been made at the back of the plaintiff. In essence, there was no notice issued to the plaintiff

while correcting Fard Badar and this fact has also been noticed by the lower Appellate Court, but while rendering the finding against the plaintiff, the lower Appellate Court was remained totally silent about said finding. As per the jamabandi for the year 1978-79, name of Arjan Singh was entered in the column No.5 as Gair Maursi, whereas, the name of Gurdial Singh was recorded as owner of land measuring 19 kanals 10 marlas in the column No.4 qua the suit land.

Thus, the trial Court, in my view, rightly entertained the suit as it had jurisdiction for rectification of the revenue entry. DW1-Ujjaggar Singh in the cross examination deposed that he has purchased the property from Nirmal Singh. He further deposed that plaintiffs and defendants are joint owners of the property owned by Nirmal Singh. DW2-Tehal Singh in cross-examination stated that he has no knowledge regarding the sanctioning of mutation on the basis of the decree passed by the Consolidation Officer. It has further surfaced in the evidence of the defendants that witnesses of the sale deeds were Lambardar Surjit Singh and Jagir Singh and there was no dispute with the plaintiffs regarding the possession of the property and the plaintiffs are in possession of the property in dispute and the property had been purchased out of joint khata. Once the property was in joint khata, sale deeds of particular area, in my view, on the basis of Fard Badar, have rightly been held illegal by the trial

Court.

Keeping in view the aforementioned facts and circumstances, the question of law, cited above, is answered in favour of the appellants and against the defendants. In essence, the judgement and decree of the lower Appellate Court is set aside and that of the trial Court is restored.

Accordingly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

December 05, 2015
savita