

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4895 of 2011 (O&M)

Date of Decision: 30.06.2015

Parkash Kaur

... Appellant

Versus

Ranjit Singh and others

... Respondents

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

Present: Mr. R.N. Moudgil, Advocate,
for the appellant.

Mr. Vijay Lath, Advocate,
for the respondents.

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

RAJIV NARAIN RAINA, J.

The substantial questions of law which arise in this appeal are:-

"a. Whether the Courts below have erred in over-looking documentary evidence viz. Judgment and decree, dated 13.6.1980 by a competent Court Exhs. D.5 and D.6, and have consequently failed to correctly adjudicate the dispute between the parties?

b. Whether the plaintiff-respondent is estopped by his act, conduct and acquiescence to file the suit out of which the instant appeal has arisen?

c. Whether the plaintiff/respondent had concealed the patent facts from the Court and had filed suit only with respect to one Khasra No. whereas the suit land is inclusive of larger area comprising three Khasra Nos. and the suit was thus also bad for partial partition?

d. Whether the settled possession of the appellant-a co-sharer – over a specific part of the suit land where she had raised her house more than 20 years back, could be interfered with which

inescapably would result in demolition of her pucca house ?

e. Whether there is misappreciation of evidence by the Courts below in that the 15 Marlas of land purchased by the appellant was not the parts of three different Khasra Nos. so as to be proportionately partitioned between the co-sharers, specically when the site was purchased for the purpose of raising a house there which in fact was raised as far back as in 1981?"

The defendant is in second appeal. The plaintiffs' suit for exclusive possession by way of partition and separate possession of abadi land out of the total land admeasuring 1 kanal 6 Marlas bearing khewat number described in the suit as per Jamabandi for the year 1996-97 falling within the revenue limits of Village Mataur, H.B. # 364 Tehsil Anandpur Sahib, District Ropar as marked in the original site plan has succeeded before the learned Additional Civil Judge (Senior Division), Anandpur Sahib by judgment and decree dated February 22, 2003 apportioning shares and dividing the property in dispute as per share holding in joint property. It may be noticed that the preliminary decree was passed on February 22, 2003 and the final decree on February 25, 2010 when the learned trial court accepted the report of the Local Commissioner as per portions shown in different colours with respect to each of the three co-sharers.

Aggrieved by the final decree, the appellant-Parkash Kaur preferred an appeal in 2010 before the learned Additional District Judge (FTC), Rupnagar to set aside the decree dated February 25, 2010. The claim in appeal was to set aside the decree and to remand the case to the trial court with a direction to decide the case as per judgment and decree passed by the learned Additional District Judge, Ropar in Civil Appeal # 36/4.4.2003 decided on January 13, 2006 in case titled *Parkash Kaur vs. Ranjit Singh*

etc. vide which the judgment and decree of the learned lower court dated February 22, 2003 was modified but not affirmed by way of appeal vide order dated January 13, 2006 passed by the learned Additional District Judge, Ropar. The appellate court in 2006 held as follows:-

“It is evident from the record that the suit abadi measuring 3K which is the subject matter of the earlier suit and the suit property measuring 39(106) subject matter of this present suit has not been partitioned by metes and bounds. The rights of the co-sharer are to be taken into consideration even after their purchase and sale in the suit property. If Ranjit Singh has already sold 15M abadi to Parkash Kaur, then at the time of partition this aspect will also be taken into consideration and cannot be ignored.

In view of discussions made above the appeal is modified to the extent that if any portion of the suit property has been sold by Ranjit Singh, then this would also be considered in the final partition.”

The case of the appellant was that as objector she had purchased 15 Marlas of land from the decree-holder Ranjit Singh, the 1st respondent in this appeal, but due to some clerical mistake, she had to bring forth a civil suit for declaration which was decided on June 13, 1980. In that suit, the decree-holder Ranjit Singh had made statement before the court that judgment debtor/present appellant Prakash Kaur had become owner of 15 Marlas of land purchased from the decree-holder in three different khasra numbers of the same property unit. This is how the judgment debtor-appellant Parkash Kaur became a co-sharer in joint property with the decree-holder in three different khasra numbers and an oral partition took place between the co-sharers i.e. the decree-holder and the judgment debtor was put in possession of 15 Marlas in khasra # 5R/30 (1-6). Presently, the

khasra numbers of land in partition proceedings falls within the jurisdiction of the Municipal Council, Anandpur Sahib. The site plan was approved by the Municipal Council, Anandpur Sahib in the year 1981. This is how Parkash Kaur-appellant raised construction in the presence of Ranjit Singh R-1.

Rather interestingly, the decree-holder Ranjit Singh himself is a mason and the construction of the demised premises of Parkash Kaur was raised by him. Hence the decree-holder Ranjit Singh was estopped from raising objections to the possession of objector/JD. Therefore, the earlier partition having taken place between the parties cannot be re-opened. Strangely, the decree-holder Ranjit Singh filed suit for partition of only khasra # 5R30 (1-6) which was decided on February 22, 2003 by the learned trial court. Against which the appeal was decided by the learned Additional District Judge, Ropar on January 13, 2006 holding: "if Ranjit Singh has already sold 15M abadi to Parkash Kaur, then at the time of partition, this aspect will also be taken into consideration and cannot be ignored." Here, consideration meant in drawing up the preliminary/final decree of partition.

Thus, the glaring mistake in the report of the local commissioner according to the lower court was that JD Parkash Kaur is in possession of 15 Marlas of land and in doing so completely ignored the order of the learned Additional District Judge, Ropar dated January 13, 2006 whereas appellant Parkash Kaur was in possession of the construction at the spot shown as Ex.D2 and the commissioner arbitrarily allotted 27'X6" of land whereas the area under construction is more than that and no efforts have been made by him to save the construction of the JD at the spot. If this is

allowed to be made final then it would result in immediate demolition of the house of the appellant, ironically constructed by mason Ranjit Singh. These are the ground realities which deserved to have been taken into consideration in terms of the site plan of the building Ex.D2 duly approved by the Municipal Council, Anandpur Sahib. This was a serious issue on which the lower courts were required to frame issues on the objections of the appellant and to adjudicate the same fairly and properly and not to have hastily passed the final decree by blindly accepting the report of the Local Commissioner/Kanungo. The sale deed registered at # 203 on April 14, 1980 in the office of the Sub Registrar, Anandpur Sahib between vendor Ranjit Singh/R-1 selling 15 Marlas of his share in joint property to Parkash Kaur where property sold was described by khewat # 90, khatoni # 139, khasra # 5//14/4(0-8), 17/1(2-9) and 0-1 Marlas being 1/13th share out of the land measuring 0-13 Marlas, khewat # 90, khatauni # 139, khasra # 5//15/1 (0-13), as shown in the Jamabandi for the year 1976-77, situated in Mataur, Hadbast # 364, Tehsil Anandpur Sahib.

In the sale deed, Ranjit Singh had declared himself principal owner of 15 Marlas of land, viz., 1/4th share of land measuring 14 Marlas out of total 2 Kanals 17 Marlas bearing the abovesaid land description.

Mr. Moudgil appearing for the appellants has drawn the attention of this court to Annexure A-4 being the decree sheet in Civil Suit # 112 of June 24, 1980 decided on June 13, 1980 by the learned Sub Judge 1st Class, Anandpur Sahib in case *Parkash Kaur vs. Ranjit Singh* in a suit for declaration with the consequential relief of permanent injunction to the effect that plaintiff is the owner in possession of land measuring 15 Marlas

out of the total land measuring 3 kanal comprised in khewat # 90 khatoni # 139 khasra # 5R/25/1 (1-3) 28 (0-11), 30 (1-6) as entered in the Jamabandi for the year 1976-77, situated at Village Mataur. The suit was decreed on the statement of defendant Ranjit Singh [the present respondent] and the decree reads as follows:-

"In view of the statement of the defendant the suit of the plaintiff is decreed and it is declared that the plaintiff is the owner in possession of land measuring 15 Marlas out of the total land measuring 3 Kanal comprised of Khewat No.90 Khatoni No. 139 Khasra No.5R/25/1 (1-3) 28 (0-11), 30 (1-6) as per the Jamabandi for the year 1976-77. The parties are left to bear their own costs."

From this, Mr. Moudgil points out that the description of the land in the decree of 1980 and that of the sale deed clearly support the case of the appellant for protection of her property including land and building constructed thereon.

In order to expound his case on pure facts, Mr. Moudgil submits that when Ranjit Singh sold land to Parkash Kaur the khasra numbers were inadvertently shown in the sale deed as "5//14/4, 17/1 and 15/1" and this mistake necessitated rectification. It was for rectification purpose that Parkash Kaur filed Civil Suit # 112 dated May 24, 1980 claiming she was the owner and in possession of land measuring 15 Marlas out of the total land of 3 Kanals bearing khasra # 5//25/1, 28 and 30. Respondent Ranjit Singh admitted this fact to be true when he proceeded to make statement in the court on June 10, 1980 agreeing as vendor that mistakenly khasra numbers were wrongly written in the sale deed and that is how the court corrected the mistake in the decree dated June 13, 1980 which are Exbs.D-5

and D-6 on the record of the trial court. That mistake was clerical in nature which had no real impact on actual rights in property sold and purchased.

It was after a lapse of 21 years of the sale of the land in question by Ranjit Singh to Parkash Kaur that he had filed Civil Suit # 87 dated May 12, 2001 for exclusive possession by way of partition from where this appeal arises respecting 15 Marlas of suit land. The motive of filing the suit is highly suspect in the face of admission of Ranjit Singh in the previous suit between the same parties. The decision based on consent is res judicata and therefore there has resulted a miscarriage of justice when the lower appellate court ignored the judgment and decree of the appellate court passed earlier on January 13, 2006 where the observation had come and to repeat; "that if any portion of the suit property has been sold by Ranjit Singh, then this would also be considered in the final partition." From this, Mr. Moudgil contends and rightly so, that the learned lower appellate court has passed the order without appreciating the directions in the judgment and decree dated January 13, 2006 passed by the appellate court which is final but the directives have not been complied with or kept in view. Both the courts below have fallen in error in not reading this vital evidence and have overlooked material facts and vital oral and documentary evidence on the record in passing an order which will result in manifest injustice to Prakash Kaur by exposing her to irreparable injury of demolition of her property where she resides.

Mr Moudgil explains that the complexity of the case arises from the fact that Ranjit Singh sold 15 Marlas of land from three different khasra numbers to Parkash Kaur but that grey area stood removed by the terms of

the sale deed where land was sold to Parkash Kaur for raising a house and, therefore, with the mutual consent of the respondent, possession of her share of the land was given to her in khasra # 5//30 to make a contiguous parcel of land on which she constructed a house admittedly in 1981, the sale having taken place a year before.

That there was a mutual settlement regarding the separate possessions of the respective shares of the parties is clear from the deposition of the plaintiff/respondent Ranjit Singh himself when appearing as P.W. 1 in the stand where he in no uncertain terms deposed:-

"..... Parkash Kaur has constructed her pucca house comprising 8 rooms ... I have my possession of the land on the West. I know the length and width of my area. It is 20 Karams in length and about 4 Karams in width. My possession has been in this way for the last 20/25 years. I have not measured the land in possession of Parkash Kaur. I have not interfered in her possession ...".

From here the picture becomes crystal clear that parties are by consent in separate possession of their shares in land for the last about 20-25 years prior to the filing of the appeal in 2011. If the construction was raised without objection and by the hands of Ranjit Singh, a mason by profession; and parties peacefully reside therein then respondents are estopped from changing their stand to the detriment of Parkash Kaur of which contradiction there is ample proof among the documents produced and the oral depositions of the witnesses recorded in the court below. It is not far to see that the intention of the transfer of property by sale effected between Ranjit Singh and Parkash Kaur was to let her construct a residential house which could never have been constructed in three different khasra

numbers apart from each other since the purpose of transaction in buying and selling 15 Marlas land would be stand defeated and the respondent can raise no valid objection in a second round of litigation in the present partition proceedings to non-suit the appellant and to deprive her of her hearth and home which will inevitably face demolition if the final decree is allowed to stand. If Ranjit Singh sold land to Parkash Kaur he had inducted her as a co-sharer in the property. It is this anomaly in khasra numbers which had arisen out of the three different khasra numbers recorded in the unamended sale deed for plaintiffs to be allowed to seek proportionate partition between the co-sharers by dividing shares in three unconsolidated parts which will result in manifest injury to the appellant by tearing her 15 Marlas from the seams. The appellant must have, no matter what, 15 Marlas under her feet falling in part of the 3 Kanals as detailed in the corrected sale deed read with Exb. D-5 and D-6 documents vide which she had purchased property and stepped in to the disputed land as a matter of right. She was entitled to keep possession of consolidated 15 Marlas land out of the 3 Kanals irrespective of the separate and specific khasra numbers.

Mr. Moudgil is right when he says that the vital pieces of documentary evidence i.e. Exb.D-5 and Exb.D-6, would turn the tables by judgment and decree dated June 13, 1980 which are a clincher to the dispute between the parties. The real dispute stood resolved by admission and consent of Ranjit Singh, the vendor himself in the statement suffered in court long ago in 1980. Section 40 of the Evidence Act, 1882 postulates that previous judgments and decrees are relevant to bar a second suit or trial.

Section 40 reads:-

“The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is, whether such Court ought to take cognizance of such suit or to hold such trial.”

Mr. Moudgil is also right when he says that the partition suit could not have been brought by the respondents with respect to one khasra number alone whereas the suit land commanded larger tract comprising 3 khasra numbers and the suit is therefore also thus bad for partial partition. It is held that the plaintiff-respondent is estopped by his act and conduct and deserves to be non-suited on the principle of acquiescence in filing a vexatious suit. There has been concealment of material facts as well from the court in the plaint to the effect that the sale deed and decree of 1980 were not articulated in the plaint which have made all the difference. There is sufficient evidence on record that appellant – Parkash Kaur raised construction of her house within 15 Marlas and was helped by none other than the vendor mason in building the house. Ranjit Singh was present in court when I asked him to affirm or deny this fact and he nodded in approval that it was true. Thus, a long settled possession of property has to be taken into account in partition proceedings so as not to lead to a situation where brick and mortar suffer demolition. Besides, prudence demands that the sale deed executed by Ranjit Singh in favour of Parkash Kaur has to be reconciled with the anomaly in the land sold out of three khasra numbers for the avowed purpose of enabling Parkash Kaur to construct a house, the purpose for which she purchased the property and the reason which influenced the decree rectifying the sale deed in 1980 where both Parkash Kaur and the respondent plaintiff were parties.

I have thus no hesitation in veering to the opinion that the judgments and decrees of the courts below, that is, in the preliminary and final partition decrees are faulty and not sustainable in the eyes of law and hence would answer the substantial questions of law framed above in favour of the appellant and against the respondents for the reasons recorded in this judgment.

Consequently, the appeal is allowed; the judgment and decree of the lower appellate court is set aside with costs in favour of the appellant and against the respondents in all the courts. The case is remanded to the appellate court to re-draw the partition and divide the property in terms of the judgment passed by this court in the present appeal by passing fresh orders. Parties are directed to appear in the lower appellate court on August 10, 2015 for further proceedings.

(RAJIV NARAIN RAINA)
JUDGE

30.06.2015
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