

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

RSA NO.5142 OF 2011 (O&M)
DATE OF DECISION : 13th FEBRUARY, 2015

Virender Singh & Others

.... Appellant

Versus

Pohap Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Ashok Khuber, Advocate for the appellants.

Mr. P. S. Nijjar, Advocate for the respondents.

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SURINDER GUPTA, J. (ORAL)

1. The plaintiff appellants, who are amongst the legal heirs of Sohan Lal son of Bhura, filed the present suit claiming the relief as follows :-

“Claim for a decree for declaration to the effect that the plff. and his brothers Shyam Singh, Desraj and Naresh Kumar are owners in possession in (sic.of) the suit land stated in para No.1 of plaint in equal shares and revenue record is thus liable to be corrected in the name of plff. and his said brothers and agreement dt. 1.3.04 is illegal null and void and not binding on rights of plff. and his said brothers, be passed in favour of plff. and against the defts. with costs. Further a decree for permanent injunction restraining the defts.1 and 4 from alienating suit land in any manner and further restraining them to get registered any sale deed in favour of any person on the basis of said agreement dt. 1.3.04 or in favour of deft.No.2 and 3 be also

passed in favour of plff. and against deft. with costs and further a decree for mandatory injunction in case defts. 1 & 4 succeed in executing sale deed in favour of deft. 2 and 3 or to any other person, for getting the sale deed set aside and cancelled be also passed in favour (sic.of) plff. from and against defts. with costs. It is also prayed that if during pendency of suit the defts. succeed in dispossession (sic. dispossessing) plff. from suit land then a decree for possession be also passed in favour of plff. and against defts. with costs or any other relief which the Hon'ble court deems proper be also granted to plff.”

2. This suit pertains to the land bearing Khewat/Khatoni No.74/117 Rect. No. 38, Killa No.7/3 situated within the revenue estate/abadi deh of village Gonchi Tehsil Ballabgarh, District Faridabad. The plaintiffs-appellants placed their reliance on a family settlement under which the aforesaid land had fallen to their share. The defendant/ respondent denied such family settlement and claimed that the land bearing Khasra No.7/3 is owned by defendant/respondent No.1.

3. Additional Civil Judge (Sr. Division), Faridabad vide judgment dated 3.8.2010 dismissed the suit filed by the appellant with the observations in para No.15 as follows :-

*“On the other hand, it is argued on behalf of contesting defendants that as per the Sanad Taksim coupled with the mutation No.6724 dated 13.6.89, copy of which is placed on the file as Ex.PW1/D, **the defendant No.1 had become the exclusive owner in possession of the aforesaid land in the partition***

proceedings. As such, it is argued that the defendant No.1 had every right to alienate the aforesaid land to the person of his liking. It is argued by learned counsel for the contesting defendants that a separate civil suit for specific performance of agreement to sell dated 1.3.2004 was pending decision between the present defendants No.1 to 3 which has already been decreed in favour of the present defendants No.2 and 3 and in pursuance of the aforesaid decree, the defendant No.1 has already executed the impugned sale deeds in favour of the defendants No.2 and 3.

4. The judgment and decree passed by the court below was upheld by learned Additional District Judge, Faridabad.

5. I have heard learned counsel for the parties and perused the paper book with their assistance.

6. Learned counsel for the appellant, fairly conceded that the appellants failed to prove their plea that the suit land had fallen to their share by way of family settlement. However, while referring to the *sanad taksim* Ex.D-14, relied upon by the defendant/respondent, he has argued that land bearing Khasra No.38//7/3 (1-8) i.e. suit land was owned by Sohan Lal and defendant No.1 as co-owners and Bhoop Singh @ Pohap Singh was not the exclusive owner of this land. The observations made by learned Civil Judge (Sr. Division), Faridabad to this effect are not based on record and are the result of misreading of evidence.

7. Learned counsel for the respondent on this point argues that the suit land was owned by defendant-respondent No.1 as in the *sanad taksim* it was mentioned to be under his cultivation possession.

8. The substantial question of law which arises for consideration in this appeal is as follows:

- (i) Whether the observations of the Courts below that defendant no.1-Pohap Singh had become exclusive owner of the land bearing khewat khatauni no.74/117, rectangle no.38, killa no.7/3 situated within the revenue estate of *Abadi Deh* of village Gonchi, Tehsil Ballabgarh, Distt. Faridabad, are based on misreading of evidence.

9. Learned Additional Civil Judge (Senior Division), Faridabad in para 21 of the judgment has observed as follows:

“21. With the help of the mutation no.6724 sanctioned on 13.6.89 (Ex. PW1/D), it has been duly proved by the defendants that the joint properties had already been partitioned amongst the co-sharers and **the land comprised in Rect. No.38, killa no.7/3 which is the suit land in the present suit had fallen to the share of the present defendant no.1 and being the exclusive owner in possession of the aforesaid land, he could very well enter into an agreement to sell the same to the defendants no.2 and 3 and the sale deeds dated 26.4.2006 and 4.5.2006 can not be said to be illegal, null and void just due to the reason that since the defendant no.1 has already alienated the share in the joint properties beyond his share, he was not left with**

**any right, title or interest in the suit land comprised in
Rect. No.38, killa no.7/3.**

10. Appellate Court below while affirming the observations of learned Additional Civil Judge observed as follows:

“17 xxx xxx..... On the other hand, mutation no.6724 sanctioned on 13.689 (Ex.PW1/D) duly proves that joint properties had already been partitioned among the co-sharers and suit land comprised in rect. No.38 Killa No.7/3 had fallen in the share of present respondent no.1. The aforesaid mutation No.6724 also finds mentioned in sale deed Ex. PY executed by respondent No.1 in favour of respondents No.2 and 3. But the aforesaid mutation and or partition proceedings have not been challenged by the plaintiffs before any court of Law.”

11. While supporting the above observations the learned counsel for the respondent referred to the *Sanad Taksim*, copy of which was produced before the lower Court as Ex.D-14, perusal of which shows that while separating shares of different co-shares, the share of Sohan Pal, Jawahar Singh and Bhoop Singh @ Pohap Singh sons of Bhura, was separated as one unit. Khasra numbers which fell to the joint share of Sohan Pal, Bhoop Singh @ Pohap Singh and Jawahar Singh were mentioned in the *Sanad Taksim*. All the above three were having equal share in the land which fell to the share of their father Bhura. While describing the share of Sohan Pal, Bhoop Singh @ Pohap Singh and Jawahar Singh, the land which was in self cultivation of Sohan Pal and Bhoop Singh @ Pohap Singh was also described but they got the land mentioned against their share in equal share as described in *Sanad Taksim*. However, the *Sanad Taksim* described that the suit land bearing khasra no.38/7/3 (1-8) was in exclusive possession of

Bhoop Singh @ Pohap Singh. As per mutation no.6724, based on this partition, the share of Sohan Pal, Bhoop Singh @ Pohap Singh and Jawahar Singh was described as 321/632 in the land measuring 30 kanal 2 marlas as reflected in the jamabandi for the year 2002-03 (Ex. PW-3/A). This land, measuring 30 Kanal 2 Marla also include the suit land, meaning thereby that Sohan Pal, Bhoop Singh @ Pohap Singh were amongst the joint owners of the suit land to the extent of their share, which they inherited from their father Bhura. The land which sons of Bhura i.e. the appellant, respondent no.1 and their brother Jawahar Singh jointly got to their share in partition was never further partitioned, as such, this plea is not available to the respondent no.1 that the suit land had fallen to his exclusive ownership.

12. Learned counsel for the respondent on referring to the copy of *Sanad Taksim*, mutation and Jamabandi for the year 2002-03, could not rebut the aforesaid facts. This conclusively proves that the Court below have committed grave error of law and fact while recording the finding that the suit land was exclusively owned by defendant-respondent no.1. As the respondent was not exclusive owner of the suit land, he was not competent to alienate the same. In this regard the law is well settled that a co-sharer can sell the land to the extent of his share and also specific khasra number in his possession, however any sale made by a co-sharer in excess of his share is illegal, null and void. Learned counsel for the appellant has argued that defendant-respondent No.1 was owner of 29 Kanal 3 Marla but had sold 30 Kanal 3 Marla of land and in this manner he has sold land more than his share.

13. In this suit the dispute pertains to the title over the suit land bearing killa no.7/3 (1-8). It is not disputed that defendant-respondent no.1 was in exclusive possession of this land and being in exclusive possession he was competent to sell the same but subject to the extent of his share in the land jointly owned by him with Sohan Lal and Jawahar Singh his brothers.

14. As a sequel of my observations above the substantial question of law framed in this case is answered in favour of the appellant and consequently, the judgment and decree passed by the Courts below are modified and the suit of the plaintiff is decreed, with costs throughout, to the extent that the suit land bearing khewat khatauni no. 74/117, rectangle no.38 killa no.7/3 (1-8) situated within the revenue estate/*abadi deh* of village Gonchi, Tehsil Ballabgarh, District Faridabad was joint ownership of Sohan Pal, Bhoop Singh @ Pohap Singh and Jawahar Singh, sons of Bhura to the extent of the share as mentioned in the *Sanad Taksim* and in the Jamabandi for the year 2002-03 i.e. 321/630 share in the land measuring 30 kanal 2 marla of which suit land was part. Any sale made by defendant-respondent no.1 shall be limited to the extent of his share in the land and beyond that shall be illegal and not binding on the right of the plaintiffs-appellants. It is also made clear that the plaintiffs-appellants shall be entitled to get separate possession of their share in the joint land by way of partition.

13th February, 2015
'raj'

(SURINDER GUPTA)
JUDGE