

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

**RSA NO. 4540 OF 2012 (O&M)
DECIDED ON : 13.08.2015**

Jagdev Singh

...Appellant

versus

Harbhajan Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. L. S. Sidhu, Advocate.

K. C. PURI, J.

Challenge in this appeal is to the judgment and decree dated 06.09.2012 passed by Shri Karamjit Singh, District Judge, Moga, vide which the appeal preferred by plaintiff/appellant against the judgment and decree dated 18.07.2011 passed by Shri Ravi Inder Singh, Civil Judge (Junior Division), Moga, was dismissed.

Brief facts as gathered from the record are that the plaintiff filed a suit for declaration alleging therein that the plaintiff has been recorded as co-sharer to the extent of 1/4th share in the suit land. Earlier, defendant No.4 and Bishan Singh were co-sharer in the suit land to the extent of 1/2 share each.

Bishan Singh died on 10.09.1977. During his life time, he executed a Will dated 28.08.1977 in favour of plaintiff and Hardev Singh and on the basis of same, mutation No. 5943 was sanctioned vide order dated 31.07.1992. The plaintiff and his brother Hardev Singh became owners in possession of the suit land to the extent of $\frac{1}{2}$ share each. Hardev Singh died and his share was inherited by his widow, son and daughter i.e defendants No.1 to 3. Plaintiff and Hardev Singh had sold some part of the land in favour of defendants No.4 to 13. Plaintiff is now owner in possession of land measuring 6 kanals 13 marlas out of the suit land. The defendants were threatening the plaintiff to alienate the land more than their share out of the suit land, for which they have no right. Hence, suit was filed.

On put to notice, defendants No.1 to 3 appeared and filed joint written statement taking preliminary objections regarding cause of action, locus standi, concealment of material facts. On merits, it was pleaded that the plaintiff has $\frac{1}{6}^{\text{th}}$ share in the joint land measuring 105 kanals 14 marlas bearing Khewat No. 118 to 122 and has $\frac{1}{4}^{\text{th}}$ share in the joint land measuring 208 kanals 7 marlas bearing Khewat No. 118 to 126. It was further pleaded that the plaintiff has already sold 47 kanals 11 marlas land out of the joint property. In this manner, he has sold 2 kanals 19 marlas more land out of his share and as such, he has no share in the suit land. The other averments were denied.

Defendants No.5 to 8, 11 and 12 filed joint written statement taking preliminary objections regarding maintainability of suit, suit not properly verified, impleadment of necessary parties etc. On merits, it was submitted that plaintiff is not owner of the suit land in any manner. It was further pleaded that the defendants purchased 84 kanals 11 marlas of land vide different sale deeds from the plaintiff and other co-sharers. The mutation had already been sanctioned in their favour. The defendants have now become owners of the suit land by virtue of sale deeds. The other averments were denied.

Replication was filed reiterating the averments contained in the plaint and denying the allegations made in the written statements. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is owner in possession of land as detailed in the head note of the plaint ?
OPP
- 2) Whether the plaintiff is entitled for relief of declaration ? OPP
- 3) If Issues No.1 and 2 are not proved, then whether plaintiff is owner in joint possession to the extent of 133/2053 share ? OPP
- 4) Whether the suit is bad for non-joinder of necessary parties ? OPD

- 5) Whether plaintiff has no cause of action to file this suit ? OPD
- 6) Whether the suit of plaintiff is not properly valued ? OPD
- 7) Relief.

In order to prove his case, plaintiff himself appeared as PW-3 and examined Karam Singh as PW-1, Amarjit Singh as PW-2, Gursewak Singh as PW-4, Dr. R.S.Sandhu as PW-5 and closed the evidence.

On the other hand, defendant No.1 himself stepped into the witness box as DW-7 and examined Harbhajan Singh, Lamberdar as DW-1, Shamsheer Singh Lambardar as DW-2, Bhajan Singh as DW-3, Inderpal Singh as DW-4, Baldev Singh as DW-5, Jagdip Singh as DW-6 and closed the evidence.

The learned trial court, after appraisal of the evidence, dismissed the suit vide judgment and decree dated 18.07.2011.

Feeling dissatisfied with the above said judgment and decree dated 18.07.2011 passed by Civil Judge (Junior Division), Moga, the plaintiff filed first appeal which was also dismissed vide judgment and decree dated 06.09.2012 passed by District Judge, Moga.

Still feeling aggrieved with the aforesaid judgments and decrees, the appellant/plaintiff has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no.13 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the relief of joint possession can be denied to the appellant ?
- 2) Whether the possession of appellant on 06 kanals 30 marlas to the extent of 133/2053 of suit land is liable to be granted to the appellant/plaintiff ?
- 3) Whether the share of appellant out of Khewat No.123 to 126, Khatoni NO. 207 to 215 total land 102 Kanlas 13 Marlas is liable to be granted or the other land of other khewats is to be included while deciding the share of the appellant ?
- 4) Whether the reading of evidence is wrong prospective to deny the relief to the appellant is illegal ?

I have heard learned counsel for the appellant and have gone through the records of the case.

The plaintiff has claimed himself to be owner of the suit property out of the land measuring 102 kanals 13 marlas. However, from the perusal of the record, it is revealed that total joint land of the parties was 208 kanals 07 marlas out of which

he has already sold his share. So, the present suit is a clever devise to seek declaration of ownership in respect of 102 kanals 13 marlas. It is settled law that in case out of the joint Khata, any one sells the property, it would be deemed to be regarding the share of Khata.

Learned counsel for the appellant could not point out as to how the findings of both the courts below that the plaintiff has already exhausted his share in the joint land, are the result of misreading and misinterpreting the evidence on record. So, I have no hesitation in holding that no substantial question of law has arisen in the instant appeal.

Consequently, the appeal is without any merit and the same stands dismissed.

AUGUST 13, 2015
shalini

(K. C. PURI)
JUDGE