

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

RSA No. 1348 of 2013 (O&M)

Date of Decision: September 23, 2015

Ujjagar Singh and another

....Appellants..

Versus

Bhajan Singh and others

....Respondents..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. S.K. Singla, Advocate,
for the appellant(s).

1. Whether Reporters of local papers 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? (√)

JASPAL SINGH, J.

This appeal has been directed by Ujjagar Singh and others (appellants) feeling dissatisfied against the judgment and decree dated October 06, 2012 passed by Id. Additional District Judge, Sangrur vide which judgment and decree dated March 05, 2009 passed by Id. Civil Judge (Junior Division), Malerkotla has been affirmed whereby suit of plaintiffs for declaration and permanent injunction to the effect that plaintiffs and defendants No. 1 and 2 are the owner to the extent of 2/7th share and defendants No. 3 to 5 to the extent of 3/7th share, are owners in possession of land measuring 20 *bighas* 10 *biswas* comprised of *Khewat/Khatauni* No. 135/350, *Khasra* Nos.180(4-10), 183(5-13), 184 (4-2) and 187(6-5) situated at village Burj, Tehsil Malerkotla as per *jamabandi* for the year 2000-01 alongwith all rights attached with the above land and that they are entitled to get the mutation of said land sanctioned in their favour as well as that the

judgement and decree dated August 05, 1991 passed in civil suit No.543 of July 20, 1991 and subsequent mutation sanctioned on the basis thereof are illegal, null and void and is not binding upon the rights of plaintiffs and proforma defendants No. 3 to 5 as well as for permanent injunction restraining defendants No. 1 and 2 from alienating in any manner and from dispossessing them from suit land, was dismissed.

2. Shortly put, the case of plaintiffs is that uncle of plaintiffs and defendants No.1 to 5 namely Sham Singh was the owner in possession of the suit land detailed above by way of oral settlement in the year 1975. He gave the suit property to plaintiffs and defendants No. 1 to 5 and delivered the actual physical possession thereof to them. The plaintiffs could not get the mutation incorporated/ sanctioned on the basis of family settlement due to some inadvertence or intricacies of law. Due to the said reason, Sham Singh continued to be recorded as owner in the revenue record. Taking undue advantage of the entries appearing in the revenue record, defendants No. 1 and 2 procured decree in their favour by filing civil suit No. 543 dated 20.07.1991 on August 05, 1991, in which, Sham Singh suffered a statement. However, after the family settlement and delivery of possession of the property in suit to the plaintiffs and defendants No.1 and 2, Sham Singh ceased to be the owner thereof and as such was not competent to suffer any decree in favour of defendants No.1 and 2. On the strength of collusive decree referred to above on August 05, 1991, defendants No. 1 and 2 have extended threats not only to alienate the disputed property but also made an attempt to dispossess the plaintiffs illegally and forcibly, which necessitated the filing of the suit for declaration as well as for permanent injunction.

3. In response to the notice issued to the defendants, defendants No. 2, 3 and 5 opted to appear and defendants No. 1 and 4 were proceeded against *ex parte*. Though, they subsequently appeared and filed their separate written statements admitting the claim of the plaintiffs. The suit was hotly contested by defendants No. 2, 3 and 5 raising preliminary objections *inter alia* on the grounds that the suit is bad for non-joinder of parties; that suit is not within limitation; that plaintiff has no locus standi to file the suit. On merits, defendants have alleged that no family settlement ever took place amongst Sham Singh, the plaintiffs and defendants in the year 1975. Sham Singh was the exclusive owner in possession of the property in dispute and he transferred the disputed property by way of civil court decree dated August 05, 1991 in favour of defendants No. 1 and 2. Neither, any family settlement ever took place nor has been acted upon. Similarly, neither the factum of family settlement was incorporated in the revenue record nor land was mutated in the name of plaintiffs and defendants on the basis of the aforesaid family settlement. Rather, the mutation was sanctioned on the basis of the civil court decree dated August 05, 1991 in favour of defendants No. 1 and 2. The plaintiffs have filed replication to the written statement filed by the contesting defendants denying the allegations contained therein and reiterating the version contained in the plaint.

5. On going through the pleadings of parties, various issues were culled out by ld. trial court in order to settle the matter in controversy between the parties.

6. Both the parties were afforded ample opportunities to adduce and conclude their evidence in support of their respective claims and they

led oral as well as documentary evidence in respect of their pleadings and subsequently closed their evidence.

7. After hearing learned counsel for the parties and appraisal of evidence brought on record by them, issues No. 1 to 4 were decided in favour of the defendants and issue No.5 was decided in favour of the plaintiffs and against the defendants. Resultantly, the suit of the plaintiffs was dismissed vide impugned judgment and decree dated March 05, 2009.

8. Aggrieved against the aforesaid judgment and decree, the plaintiffs-appellants preferred an appeal before the Id. District Judge, which was entrusted to the Court of Additional District Judge, Sangrur and the same was also dismissed vide impugned judgment and decree dated October 06, 2012.

9. Still aggrieved against the judgments and decrees passed by both the courts below, appellants-plaintiffs have preferred the instant appeal.

10. While assailing the findings recorded by Id. trial court as well as scrutinizing the impugned judgments and decrees passed by Id. trial court and upheld by lower appellate court, it has been argued with vehemence by learned counsel for the appellants that the same are absolutely against the evidence available on file and legal proposition of law. Mis-appreciation of evidence has resulted into miscarriage of justice. It is an admitted fact that Sham Singh was the exclusive owner of the property of the suit, who orally gave the suit property to the parties to the instant lis in the presence of their relatives and at the time, actual physical possession of their respective share was also delivered to them. However, due to some inadvertence or over

sight or omission, mutation on the basis of the family settlement could not

be incorporated/sanctioned in favour of the parties. It is well settled proposition of law that the mutation does not confer any title, which otherwise, remained continued in the name of Sham Singh in the revenue record. It was Zora Singh and Bhajan Singh defendants No. 1 and 2, who by taking undue advantage of the entries in the revenue record got procured collusive decree from Sham Singh by Civil Suit No. 543, dated July 20, 1991 that too by ignoring the oral family settlement arrived at between the parties in the year 1975. Moreover, after the family settlement, Sham Singh was left with no right in the property in dispute and was not competent to suffer the collusive decree. Not only this, even Bhajan Singh defendant No.2 while appearing in the witness box as DW-4 has also categorically admitted that Sham Singh gave the suit property to all the brothers in equal share in the family settlement in the year 1975. Admission is best proof and no corroboration is required to the admission in this regard. Since, Sham Singh was not the owner of the property in suit on the date i.e. July 20, 1991, he suffered a decree, thus the same is liable to be set aside. Similarly, the impugned judgments and decrees are also not sustainable in the eyes of law and deserves to be set aside by way of acceptance of instant appeal. Consequently, suit of the plaintiff merit decretal that too with special costs.

11. After bestowing due consideration to the submission made by learned counsel for the appellants and scrutinizing the impugned judgments and decrees and evaluating the evidence available on file, this Court does not find any substance in the submission made by learned counsel for the appellants.

12. Undoubtedly, Sham Singh was the absolute owner in possession of the property in suit. Though, appellants-plaintiffs have alleged

that an oral family settlement took place, in which the land in question was given to the plaintiffs as well as defendants in equal shares by Sham Singh in the year 1975 but there is no documentary evidence in this regard. The statements of plaintiffs in this regard or that of defendant(s) can be said to have been not proved on record. In case, ***“Ram Rikhi vs. Kalu Ram and others” 2010 (suppl.) Civil Court Cases 73***, this Court has observed that where there is plea of family partition but exact date when family partition took place never disclosed and also it was not recorded in the revenue record, it was held that family partition was never proved.

13 The aforesaid authority squarely covers the case in hand. Though, family settlement is alleged to have been taken place in the year 1975, but to the utter surprise till the filing of the suit before the ld. trial court in the year 2003, no such family settlement has seen the light of the day. Moreover, on the date when civil court decree was suffered by Sham Singh, he was the owner in possession of the property in suit as per revenue record. It is also well settled that until and unless factum of family partition is not incorporated in revenue record and mutation is not sanctioned thereof and the possession is delivered in pursuance of family settlement to the concerned persons, it cannot be said that there was a family settlement in between the parties. Not only this, judgement, which has been challenged through instant lis relates to the date August 05, 1991, which was challenged in the year 2003 i.e. after the expiry of more than 12 years and from this angle suit is not maintainable beyond limitation. The suit should have been filed within 3 years from the date of decree as per Article 59 of the Limitation Act 1963. Defendants No. 1 and 2 are the absolute owner of the property in suit on the basis of decree in question i.e. August 05, 1991,

which has been incorporated in the revenue record. Mutation No. 1307 has also been sanctioned on the basis thereof. Since, defendants No. 1 and 2 are absolute owner of the property in suit, neither they dispossessed from the suit property nor they can be restrained from alienating the appellants therefrom. Rather, plaintiffs have nothing to do with the property in question and the suit for declaration and permanent injunction has been rightly dismissed by the Id. Civil Judge, Junior Division, Malerkotla vide judgment dated March 05, 2009, which has been upheld by Id. Additional District Judgem Sangrur vide judgment dated October 06, 2012.

14. Finding no infirmity, illegality or impropriety in the impugned judgements and decrees passed by both the courts below, the same are upheld. There is no question of law much less than substantial question of law in the instant appeal.

15. In the light of what has been discussed above, appeal being devoid of any merit, is dismissed.

September 23, 2015
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(JASPAL SINGH)
JUDGE