

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1014 of 2015 (O&M)
Date of Decision: July 22, 2015

Jagram Singh and another

...Appellants

Versus

Nasib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Avnish Mittal, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Jagram Singh and Ram Singh Bains have filed this regular second appeal against respondents-plaintiffs Nasib Singh, Sher Singh (since deceased) through LR's and proforma respondent Municipal Committee, Shahabad(M), challenging the impugned judgment and decree dated 30.08.2011 passed by learned Civil Judge (Junior Division) Kurukshetra, vide which the suit filed by the plaintiffs-respondents for declaration with consequential relief of permanent injunction was decreed and also the judgment and decree dated 18.12.2014 passed by learned Addl. District Judge, Kurukshetra, vide which the appeal filed by the appellants-defendants was partly accepted.

The brief facts of the case are that plaintiffs-respondents

Nasib Singh, Sher Singh though his LR's filed a suit against

appellants-defendants Jagram Singh, Ram Singh Bains and Municipal Committee, Shahabad(M), for declaration and joint possession to the extent of $\frac{1}{2}$ share in the suit property with further prayer for grant of declaration to declare the municipal records/municipal entries in favour of Puran Singh, deceased Bachni Devi and defendants No.1 and 2 as illegal, null and void, along with relief of permanent injunction restraining the defendants No.1 and 2 from dispossessing the plaintiffs from the suit property. The case of the plaintiffs is that they are step brothers of defendants No.1 and 2, who were born out of the wedlock of father of plaintiffs and his second wife namely Bachni Devi. The father of the plaintiffs and defendants No.1 and 2 namely Jeet Singh was the owner of the plot. After the death of Jeet Singh, the plot was inherited by plaintiffs and defendants No.1 and 2 as owners in equal shares. A house was constructed jointly over the plot in question and now the plot is a house bearing No.146, ward No.2 within the municipal limits. After the second marriage, Jeet Singh got transferred the house in question in the name of deceased Bachni Devi in the municipal records. Bachni Devi expired on 12.12.1999 and on the basis of Will executed by Bachni Devi, defendants No.1 and 2 in collusion with municipal committee, got transferred the suit property in their names in the municipal records. These entries in the municipal records are wrong and illegal. It is further the case of the plaintiffs that Jeet Singh was not competent to transfer the suit property in the name of Bachni Devi and the Will in question is a false and fabricated document.

On the other hand, the case of defendants No.1 and 2 in the written statement is that plaintiffs have no right or interest in the suit property. An ejectment petition was filed by defendant No.3 against Bachni Devi and ejectment order was passed against Bachni Devi by the Collector but in the appeal, the order of Collector was set aside and Bachni Devi was declared owner in possession of suit property. The construction was raised by Bachni Devi after her marriage and the suit property was used by Bachni Devi for domestic purposes. The relationship was admitted by the defendants. It was further submitted that Will dated 14.06.1999 was validly executed by Bachni Devi and answering respondents are owners in possession of the suit property. Defendant No.3 in the written statement submitted that municipal entries were changed on the basis of Will executed by Bachni Devi in favour of defendants No.1 and 2.

After framing the issues and after giving opportunity to the parties to lead evidence, learned Civil Judge (Junior Division) Kurukshetra, decreed the suit of the plaintiffs. Aggrieved from the above-said judgment and decree, appellants-defendants filed an appeal and learned Addl. District Judge, Bhiwani, partly accepted the appeal vide judgment and decree dated 21.11.2011 and modified the share of the parties in the suit property.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-defendants.

At the time of arguments, learned counsel for the

appellants argued that Bachni Devi was owner as per the letter written by Jeet Singh, original owner, to the Municipal Committee to change the name of the owner in the municipal record. He further argued that in the municipal record, site plan was sanctioned showing Bachni Devi as owner. Ex.P19 is the notice and findings were given by the Commissioner. He next argued that in the assessment register, Bachni Devi has been shown as owner. Learned counsel for the appellants next contended that defendants No.1 and 2 are in established possession, so they be declared as owner.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that it is admitted case of the parties that earlier Jeet Singh was owner of the property. It is also admitted case of the parties that no sale deed, transfer deed or decree has been passed in favour of Bachni Devi to make her owner nor any relinquish deed was executed to make Bachni Devi as owner of the property. Merely, a letter written by Jeet Singh to the Municipal Committee to change the name of the owner as Bachni Devi instead of Jeet Singh, will not amount to document of title. The case of the defendants-appellants is wholly based on this letter that Bachni Devi has become owner by way of this letter written by Jeet Singh to the Municipal Committee. Otherwise also, record of Municipal Committee, in no way, can be held as document of title. The mere fact that in the site plan Bachni Devi is shown as owner or in the assessment register, she is shown as owner or any notice given by the

Commissioner to Bachni Devi as owner, will not make Bachni Devi as owner of the property. She can become the owner by way of inheritance or on the basis of Will or by sale deed/transfer deed/relinquishment deed or by a Court decree. There is no such document on record of passing of title to Bachni Devi. Therefore, Bachni Devi was not owner of the property in dispute. Jeet Singh was owner of the property and admittedly plaintiff No.1 Nasib Singh and Sher Singh, who has been now sued as LR's, being sons of Jeet Singh are co-owners of the house in dispute.

Learned counsel for the appellants has also argued that appellants are in established possession, so on the basis of possession, they should be declared as owner. Learned counsel for the appellants has also cited judgment passed Hon'ble Division Bench of this Court in ***Nirmal and another vs. State of Punjab and others, 2012(3) LAR 589***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case. In the case in hand, admittedly, father of plaintiff No.1, defendants No.1 and 2 and grand father of LR's of plaintiff No.2, was the owner of the property and the dispute is regarding inheritance of the disputed house. So, the above-cited judgment cannot be relied upon in the present case.

Learned Addl. District Judge, Kurukshetra, has modified the judgment and decree passed by learned Civil Judge, Kurukshetra, by declaring the plaintiffs as owner in joint possession to the extent of 2/7 share in the suit property in equal share whereas defendants No.1

and 2 and their three sisters are held owners to the extent of 5/7 share in the suit property in equal share. There is also no dispute between the parties that three sisters have also inherited the property of Jeet Singh.

The findings of fact given by the Courts below are concurrent. Nothing has been pointed as to which evidence has been misread. There is also nothing on the record to show that how the findings given by the Courts below are perverse.

In view of the above discussion, I find that the judgment and decree passed by learned Addl. District Judge, Kurukshetra, modifying the shares of the parties and upholding other findings given by learned Civil Judge (Junior Division) Kurukshetra, are correct, as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 22, 2015
Vgulati

(INDERJIT SINGH)
JUDGE