

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

RSA No.1066 of 2015 (O&M).

Date of Decision: 03.12.2015.

Pritam Singh and others

....Appellants.

VERSUS

Gurmail Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. S.S. Salar, Advocate for the appellants.

SNEH PRASHAR, J.

CM-3157-C and 3158-C of 2015

There is a delay of 82 days in filing and 14 days in refiling the appeal. In view of the grounds mentioned in the application, delay of 82 days in filing and 14 days in refiling the appeal is condoned.

Applications stand disposed of.

RSA-1066-2015 (O&M)

1. This was Regular Second Appeal filed by appellants-plaintiffs Pritam Singh and others (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 28.09.2012 passed in Civil Suit

No.67 of 2009 by learned Civil Judge (Junior Division), Dhuri, dismissing the suit for declaration filed by them against respondents-defendants Gurmail Singh and others (hereinafter referred to as the “defendants”), which was upheld by the first appellate Court vide judgment and decree dated 17.05.2014.

2. The relevant facts are recapitulated hereunder:-

Appellants-plaintiffs filed a suit for declaration claiming to be owners of the land vide registered sale deed dated 31.12.1953. They alleged that the names of Chanan Singh and Gurdial Singh sons of Arjun Singh have been wrongly written in the revenue record and the same are liable to be deleted in view of their (plaintiffs') being the owners-in-possession. A permanent injunctive order was also sought seeking to restrain the defendants-respondents from alienating the suit property on the basis of the wrong entries.

The appellants pleaded that originally Hari Singh, Gurbachan Singh and Dalip Singh were owners of the land measuring 20 Bighas 5 Biswas, situated at Kumbhwal as detailed in registered sale deed No.1033 dated 31.12.1953. Later, during the consolidation the suit land was allotted in lieu of the land purchased. The purchasers continued to be owners-in-possession of the suit land during their lifetime. It was alleged that Gurbachan Singh died 1½ years ago and is survived by appellants No.1 to 4 whereas appellants No.5 to 8 are the legal heirs of Hari Singh who died 15 years ago and appellants No.9 and 10 are the legal heirs of Dalip Singh who also died about 1½ years ago. After the death of their respective fathers, the

appellants being their successors in interest claimed to be owners-in-possession of the suit land. Chanan Singh and Gurdial Singh were said to be having no concern with the suit land as they had never purchased any part nor have been in possession of the same, but their names had been wrongly incorporated in the revenue record. Chanan Singh died unmarried and issueless and his estate was inherited by his brothers namely, Gurdial Singh, Gurbachan Singh, Dalip Singh and Hari Singh. Gurdial Singh and his brothers had also died and the respondents are their legal heirs. Although the respondents have no right, title or interest in the suit land, they are threatening to alienate the same illegally.

3. On notice, the defendants-respondents appeared and contested the suit by filing written statement raising various preliminary objections with regard to maintainability of the suit, limitation, non-joinder of necessary parties, cause of action and concealment of material facts.

On merits, denying all material averments of the appellants, the respondents submitted that Hari Singh and his brothers, one of whom was Gurdial Singh, partitioned their total property including the suit land and the land measuring 23 Bighas 3 Biswas comprised in Khata No.265/247/450-454 in an oral family settlement and entered into possession of their respective properties. The property that fell in share of Gurdial Singh was held by him as owner-in-possession during his lifetime and after his death, they (respondents) became the owners-in-possession of the same.

It was submitted that Gurmeet Kaur daughter of Gurbachan

Singh and Indro, Guddi, Surjit Kaur being daughters and Bhagwan Kaur being widow are also legal heirs of Gurbachan Singh and Hari Singh respectively. Similarly, Amarjit Kaur-daughter and Surjit Kaur-widow are legal heirs of Dalip Singh who were also necessary parties to the suit but had not been impleaded by the appellants.

4. A replication was filed by the appellants controverting the objections raised by the respondents and reasserting their claim as put forth in their plaint. On the rival contentions of the parties, following issues were framed:-

- (1) Whether plaintiffs are entitled for the relief of declaration, as prayed for? OPP.
- (2) If so, whether plaintiff is entitled to relief of permanent injunction, as prayed for? OPD.
- (3) Whether suit is not maintainable? OPD.
- (4) Whether suit of the plaintiff is time barred? OPP.
- (5) Relief.

5. Appellants as well as the respondents adduced ocular as well as documentary evidence.

6. Considering the submissions made on behalf of the parties and the evidence produced by them, learned trial Court came to the conclusion that the appellants had not approached the Court with clean hands. They had no cause of action and also their claim is completely time barred. Accordingly, all issues no.1 to 4 were decided against the appellants and their suit was dismissed.

7. Appellants preferred an appeal against the judgment and decree dated 28.09.2012 passed by learned trial Court which was dismissed by

learned Additional District Judge, Sangrur vide judgment and decree dated 17.05.2014.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. S.S. Salar, learned counsel representing the appellants have been considered.

10. It was argued on behalf of the appellants that they had been non suited by learned trial Court as well as by the first appellate Court only on the ground that they had failed to link the suit land with the old Khasra numbers purchased by their predecessors in interest vide registered sale deed Ex.P1. Learned counsel asserted that when the respondents did not dispute identity of the land with regard to which there was a dispute between the parties, no further evidence was required to be produced by the appellants for proving identity of the suit land. It is the land of which the respondents claim to be owners-in-possession which in fact is owned and possessed by the appellants by virtue of registered sale deed No.1033 dated 31.12.1953. The revenue entries reflecting in the column of ownership and possession in the name of Chanan Singh and Gurdial Singh sons of Arjun Singh are factually wrong and deserve to be corrected.

11. The appellants claimed to be owners-in-possession of the suit land on the ground that the said land was allotted during consolidation in lieu of the land purchased by them vide registered sale deed dated 31.12.1953 Ex.P1. To prove the said contention, it was not only necessary for the appellants to establish that the suit land was allotted during

consolidation to their predecessors in interest but it was also necessary to link the allotted land with the land which was subject matter of the sale deed No.1033 dated 31.12.1953 Ex.P1 to prove that the suit land was allotted in lieu of the land purchased. For the reason that the respondents claimed to be owners-in-possession of the land with regard to which the appellants were raising dispute, by no stretch of imagination was sufficient to co-relate the Khasra numbers of the suit land with the old Khasra numbers incorporated in the sale deed Ex.P1. It was necessary for the appellants to produce the excerpt or atleast the relevant Jamabandis or the allotment order for connecting the suit land with the land detailed in the sale deed Ex.P1. In absence of link evidence, it was rightly held by learned trial Court as well as learned first appellate Court that the appellants had failed to prove their case.

12. It may be added further that the appellants had also been non suited on the ground of limitation, cause of action as well as the suit being bad on account of non joinder of necessary parties. The sale deed Ex.P1 relied upon by the appellants is dated 31.12.1953 whereas they filed the suit in the year 2009 without explaining any reason how the entries in the revenue record were not in their knowledge and why for such long years they had never come forward to seek correction of the same. The appellants did not plead the date, month or year when they learnt about the entries and the cause of action arose to them for filing the present suit. Lastly, as observed by learned first appellate Court, during his statement PW1 appellant Pritam Singh admitted that the mutation of the suit property on the

basis of the sale deed was sanctioned in the year 1953 only in the name of Gurbachan Singh and Dalip Singh whereas the case of the appellants was that Hari Singh, Gurbachan Singh and Dalip Singh had purchased the suit land. Gurmeet Kaur daughter of Gurcharan Singh; Bhagwan Kaur widow of Hari Singh, who admittedly were alive and four daughters and widow of Dalip Singh who were also alive, were not impleaded as party to the suit although they were necessary parties in view of the pleadings of the appellants. Thus, seen from every angle, the suit of the appellants deserved outright dismissal.

There being no ground for intervention in the concurrent findings of learned trial Court and appellate Court as there is no substantial question of law involved for decision, the appeal is devoid of merit and is dismissed.

(SNEH PRASHAR)
JUDGE

03.12.2015
jitender