

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

**Regular Second Appeal No.1989 of 2015 (O&M)
Date of decision : 11.05.2015**

Gurlal Singh & another ...Appellants
versus

Gurinder Singh & others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Dilpreet Singh Gandhi, Advocate for the appellants.

RITU BAHRI , J.

CM-5240-C-2015

There is a delay of 14 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 14 days in filing the appeal is condoned.

CM stands disposed of.

RSA-1989-2015

The appellants/defendants have come up in regular second appeal against the judgment of the lower appellate Court dated 17.01.2015 whereby the suit of the plaintiffs for declaration of mutation 7442 from the name of Harbans Kaur @ Banso relating to the land measuring 22 kanals 17 marlas was decreed.

Originally, Tara Singh son of Kirpa Singh and Ujagar Singh son of Kirpa Singh were owners of property measuring 114

kanals 7 marlas. After the death of Ujagar Singh, mutation was sanctioned in favour of Banto and Melo (two widows) his sons namely Mohinder Singh and Harbans Singh and his daughter namely Harbans Kaur. Mohinder Singh is the predecessor of the plaintiffs and Harbans Singh is predecessor of defendants. Tara Singh also died and he was issueless and his property was also devolved upon the legal heirs of Ujagar Singh. Thereafter, Banto also died and Melo, Mohinder Singh, Harbans Singh and Harbans Kaur became the owners of the property in dispute to the extent of $\frac{1}{4}$ th share each. Melo and Harbans Kaur @ Banto together sold their $\frac{1}{4}$ th share out of total land measuring 105 kanal 1 marla i.e. 26 kanals 5 marlas situated in village Bandala, Tehsil and District Amritsar in favour of Mohinder Singh. The registered sale deed was executed for the consideration of Rs.33,000/- and sale deed was registered on 12.06.1981 through which Mohinder Singh became owner of the suit property to the extent of 26 kanals 5 marlas. Further Melo also sold 7 kanals 2 marlas out of khasra No.54/5 min (Pahar) bearing khata khatoni No.390/876 as per jamabandi for the year 1975-76 at Village Bandala for sale consideration of Rs.10,000/- registered vide sale deed dated 12.06.1981, therefore, Mohinder Singh became the owner of 7 kanals 2 marlas of land. Thereafter, as per the oral family settlement Mohinder Singh came in the exclusive possession of land fallen to his share and at present plaintiffs are in possession of the above said land out of two sale deeds as per the jamabandi 2000-01.

Balwant Kaur @ Banto died on 15.01.1981 and Tara Singh died much

before that and, therefore, Melo as well as Harbans Kaur also inherited the property left by Tara Singh as well as Banto and they had sold their share on 12.06.1981 but mutation was not sanctioned in favour of Mohinder Singh and it was originally sanctioned in favour of Harbans Kaur @ Banto and defendants had taken undue advantage of this fact and had got executed some document and got sanctioned mutation in their names but Harbans Kaur @ Banto was not owner of the said property nor she had any right to sell that property, therefore, mutation is illegal, null and void and creates no right and title in favour of defendants. As per revenue record the suit property was originally mentioned in favour of Harbans Kaur @ Banto to the extent of 1/5th share but on her execution of the sale deed on 12.06.1981, there was no share with her which she can sold in favour of Jaspal Singh and Gurlal Singh i.e. defendants.

On notice, defendants filed the written statement and on merits stated and admitted that Tara Singh and Ujagar Singh were the owners of land measuring 114 kanals and 07 marlas. They also admitted that Tara Singh died issueless and mutation of inheritance of Tara Singh was sanctioned in favour of Mohinder Singh, Harbans Singh and Harbans Kaur. They submitted that the alleged sale deed in favour of plaintiffs was without any consideration and was forged and fabricated document. They further submitted that legal and valid sale deed was executed by Melo and Harbans Kaur in favour of Dilbag Singh, Gurlal Singh and Jaspal Singh after receiving the consideration

amount on 12.06.1981 and the sale deed was duly registered before the Sub Registrar and mutation has also been sanctioned and incorporated in the revenue record and they denied the oral petition and exclusive possession of plaintiffs over the suit land. Banso had executed sale deed in favour of defendants on 26.06.2001 and mutation had been inherited in their favour, vide mutation No.7442 in the land measuring 22 kanals 17 marlas being 1/5th share in the joint khata and this sale deed is legal and valid and binding on the parties. The trial Court framed the following issues:

- “1. *Whether the plaintiffs are entitled for declaration as prayed for? OPP*
2. *Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
3. *Whether the suit of the plaintiffs is not maintainable? OPD*
4. *Whether civil court has got no jurisdiction to try and entertain the present suit? OPD*
5. *Whether the suit is not maintainable? OPD*
- 5(a) *Whether the suit of the plaintiffs is bad for mis joinder and non joinder of the necessary parties? OPD*
- 5(b) *Whether the suit of the plaintiffs is time barred? OPD*
6. *Relief.”*

The trial Court, after going through the evidence led by the parties partly decreed the suit of the plaintiffs. However, the lower appellate Court came to the conclusion that Tara Singh and Ujagar Singh were the owners of the suit property measuring 114 kanals 07 marlas as mentioned in the plaint of the suit to the extent of ½ share

each. After the death of Ujagar Singh, his share in the suit property came to the share of Melo and Banto (two widows) together, Harbans Singh (son) and Mohinder Singh (son) and Harbans Kaur (daughter) to the extent of $\frac{1}{4}$ th share each. After the death of Banto her share also went to Melo being another widow as both widows take one share. Therefore, Melo, Harbans Singh, Mohinder Singh and Harbans Kaur became owner of $\frac{1}{4}$ th share each. Thereafter, out of 105 kanals 1 marla, Melo along with Harbans Kaur sold their $\frac{1}{4}$ th share in favour of Mohinder Singh, vide sale deed dated 12.06.1981 Ex.P1. Melo and Harbans Kaur together again sold their $\frac{1}{4}$ th share out of 105 kanal 01 marla in favour of Jaspal Singh, Gurlal Singh and Dilbag Singh, vide sale deed dated 12.06.1981 Ex.D3. The original sale deeds were on record Ex.P1 and Ex.D3. The half share of Tara Singh was mutated in favour of legal heirs of Mohinder Singh, legal heirs of Harbans Singh and Harbans Kaur. From the perusal of these documents Ex.P1 and Ex.D3, it is clear that Harbans Kaur and Melo had executed the sale deed of their $\frac{1}{4}$ th share together in favour of Gurlal Singh, Jaspal Singh and Dilbag Singh and Mohinder Singh. Both documents Ex.P1 and Ex.D3 were proved on record by respective parties by bringing on record original sale deeds. Both were original documents, which were 30 years old. The sale deed dated 12.06.1981 in favour of Mohinder Singh was duly proved hence Harbans Kaur @ Banso was not competent to sell this land to defendants, vide sale deed dated 26.06.2001. No share was left with Harbans Kaur @ Banso after

execution of Ex.P1 and Ex.D3. In the revenue record, Harbans Kaur was shown as owner of the suit property because mutation on the basis of sale deed dated 12.06.1981 made by Melo and Harbans Kaur together in favour of Mohinder Singh was not made. The mutation does not create any right, it was the sale deed which creates title. Since the sale deed dated 12.06.1981 in favour of Mohinder Singh Ex.P1 and 12.06.1981 in favour of defendants and Dilbagh Singh Ex.D3 were duly proved on record hence sale deed dated 26.06.2001 in favour of defendants is null and void and was not binding on the rights of the plaintiffs.

The lower appellate Court held that on the sale deed dated 26.06.2001, in favour of defendants was void ab initio as Harbans Kaur @ Banso was not competent to execute the sale deed after executing the sale deed dated 12.06.1981 in favour of Mohinder Singh Ex.P1. There was no need for getting the decree for setting aside the sale deed dated 26.06.2001. This finding was recorded by making reference to a judgment of the Hon'ble Supreme Court passed in the case of **Prem Singh Vs. Birbal, 2007 (4) CCC 226.** The lower appellate Court decreed the suit of the plaintiffs to the effect that mutation No.7442 from the name of Harbans Kaur @ Banso relating to the land measuring 22 kanals 17 marlas i.e. to the extent of 1/5th share of total land measuring 114 kanals 07 marlas as detailed in the jamabandi for the year 2000-2001 situated in village Bandala, Tehsil and District Amritsar is illegal, null and void and creates no right title

in favour of the defendants.

The lower appellate Court, while considering the appeal filed by the defendants held that a permanent injunction could be granted in favour of a co-sharer, which was in exclusive possession of the joint khata. Presumption has to be attached to the correctness of a jamabandi which showed that the plaintiffs were in possession of the suit land. The presumption is attached to the correctness of a jamabandi unless some evidence was led to rebut the presumption of truth attached to the jamabandi. The suit of the plaintiffs for permanent injunction was decreed and mutation No.7442 sanctioned in the name of Harbans Kaur @ Banso was declared illegal, null and void. The defendants were restrained from alienating this property measuring 22 kanals 07 marlas inforcibly dispossessing the plaintiffs from the property.

After going through the judgment passed by the lower appellate Court, counsel for the appellants has not been able to show that after the sale of land in favour of plaintiffs on 12.06.1981 (Ex.P1), Harbans Kaur had no share in the property left, which she could pass on 26.06.2001. Both these sale deeds were duly proved by the parties. Essential outcome of the above two sale deeds was that Harbans Kaur has left no share in the property to execute the subsequent sale on 26.06.2001. The lower appellate Court has rightly decreed the suit of the plaintiffs and set aside the mutation by treating the sale deed dated 26.06.2001 as null and void. No substantial question of law arises for

adjudication.

Dismissed.

11.05.2015
Vinay

(RITU BAHRI)
JUDGE