

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

117

Regular Second Appeal No.84 of 2014

Date of Decision: August 27, 2015

Raghbir Kaur and others

...Appellants

Versus

Amarik Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S. Bedi, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgments and decree passed by the Courts below, whereby suit for declaration to the effect that the sale deed dated 21.07.1998 in favour of defendants 11 and 12 by defendants 6 to 9 by which specific Killas numbers without being in their possession and sale deed dated 17.02.1999 in favour of defendants 11 and 12 by defendant No.6 acting as guardian of minor defendant No.10 are illegal, null and void and liable to be set aside, mentioning therein specific Khasra numbers and giving them possession and further that they be declared owners in possession of the suit property, has been partly decreed to the effect that the alienation of specific Khasra numbers mentioned in the impugned sale deeds and mutations sanctioned on the basis of the sale deeds are not binding on the rights of the plaintiffs and both the impugned sale deeds will be treated as sale of share only qua the shares of vendors of the sale deeds. The plaintiffs have also been given liberty to pursue the matter to take possession of the suit land in the partition proceedings pending before the Court of Assistant Collector 1st Grade, Pehowa and appeal preferred by the appellants-plaintiffs against the said judgment and

decree dated 27.10.2010 passed by the Additional Civil Judge (Senior Division), Pehowa, stands dismissed by the Additional District Judge, Kurukshetra, on 01.05.2013.

2. It is the contention of the learned counsel for the appellants-plaintiffs that the Courts below have not appreciated the evidence led by the parties in the correct perspective, specially in the light of the fact that in Regular Second Appeal No.144 of 1988, this Court by its judgment dated 27.10.1988, on the basis of the statements made by the parties, decreed the suit in favour of Sukhbir Singh predecessor-in-interest of the appellants-plaintiffs that he is owner in possession of land measuring 30 kanals 8 marlas comprised in Rectangle No.34, Killa Nos.9, 11/2/2 of Khewat No.224, Khatauni No.441 in place of the defendants. In the light of the above order of the High Court, where predecessor-in-interest of the appellants-plaintiffs was held to be in possession of Rectangle No.34 Killa No.1/2 and 2 would continue to be in possession until partition of the suit property. The judgments, thus, passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the counsel for the appellants-plaintiffs and have gone through the judgments passed by the Courts below.

4. No doubt, as per the judgments passed by this Court in Regular Second Appeal No.144 of 1988 dated 27.10.1988, the predecessor-in-interest of the appellants-plaintiffs was held to be in possession of Rectangle No.34 Killa No.1/2 and 2 which is one of the properties which is in dispute in the present case but nothing has been brought on record to show that the predecessor-in-interest i.e. Sukhbir Singh ever remained in possession of this land till his death i.e. 02.08.1994. Merely in the pleadings, it has been stated

that the appellants-plaintiffs have been dispossessed from the land, neither any date nor the year is mentioned therein with regard to such dispossession. PW-2 Jaskaran Singh-plaintiff No.2 when appeared as a witness, in his cross-examination pleaded ignorance regarding possession of the defendants on the land in question. He was even unable to tell whether any construction in the house was existing in these Killa numbers or not. It has not come anywhere in the pleadings that the appellants-plaintiffs had ever raised any objection when the construction was being raised by the persons, who had purchased the land. It has come on record that a boundary wall was in existence on the land in Rectangle No.34 Killa No.2 and Rectangle No.34 Killa No.1/2 since the years 1998-1999. Appellants-plaintiffs have themselves placed on record copy of the jamabandi for the years 1998-1999 which shows possession of the persons others than the appellants-plaintiffs on the land. The findings, thus, recorded by the Courts below while declining the decree as prayed for, cannot be said to be without any basis or on improper appreciation of the evidence brought on record.

5. The Courts below have rightly come to the conclusion and held that the sale of specific Khasra numbers would not be permissible as the partition of the land has not taken place and the impugned sales would amount to sale of a share as and when the sale deed was executed. It has also come on record that proceedings for partition stood initiated in the year 2006, which are pending before the Assistant Collector 1st Grade, Pehowa. The mutations, therefore, sanctioned on the basis of those sale deeds have rightly been held to be not binding on the rights of the appellants-plaintiffs, which are to be determined in the partition proceedings.

6. Both the Courts below have returned concurrent findings after

properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the present appeal, the same stands dismissed.

August 27, 2015

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE