

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

CR No.4715 of 2014(O&M)

Date of decision:10.11.2016

Harjinder Singh

....Petitioner

VERSUS

Rajinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Anil Chawla, Advocate for respondent No.3.

REKHA MITTAL, J.

The present petition directs challenge against order dated 01.03.2014 (Annexure P-3) passed by the Civil Judge (Junior Division), Amritsar whereby application filed by respondents No.2 and 3/defendants No.2 and 3 to prove the relinquishment deed dated 24.09.1977 by way of secondary evidence has been allowed.

Counsel for the petitioner/plaintiff has submitted that the plaintiff has filed a suit for permanent injunction restraining the defendants from illegally dispossessing or interfering into peaceful possession of the plaintiff over plot no.10 min situated in Sultanwind Urban abadi kot Atma Ram, Tehsil and District Amritsar, detailed in head-note of the plaint and depicted red in the site plan attached with the plaint. It has been averred that Prakash Kaur widow, Jasbir Singh, Satnam Singh sons and Nirmal Kaur daughter of late Baldev Singh son of Bhan Singh sold the suit property in favour of the petitioner for a valuable consideration of Rs.1,12,000/- vide registered sale deed dated 06.08.2010 and mutation

No.54496 has been sanctioned in his favour. Smt. Parkash Kaur etc. inherited the property from Sardar Bhan Singh as per mutation No.51782 sanctioned in their favour. Since the date of purchase, the petitioner is in possession of the suit property as owner and the defendants have no right to dispossess him forcibly and unlawfully or to cause damage to the suit property.

Defendants No.2 and 3 (contesting respondents) filed the written statement and, in turn, controverted the allegations set up in the plaint. In para 2 of the preliminary objections, it has been averred that in fact Sardar Bhan Singh was owner of the suit property and after his death, it was inherited by his sons Sukhdev Singh and Hardev Singh, Harbans Kaur (widow) and Rajinder Kaur (grand-daughter) in equal share and Harbans Kaur etc. sold the suit property in favour of Maninder Singh and Tejinder Singh sons of Hardev Singh vide registered sale deed dated 04.06.1997 and delivered possession. Tejinder and Maninder Singh sold the same to Om Parkash and Smt. Darshana Rani and delivered possession to them vide sale deed dated 25.05.2001 and now vendees are owners in possession of the suit property. The same plea was reiterated in reply on merits.

Later, an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the written statement was filed by respondents No.2 and 3 to plead that Baldev Singh son of Sardar Bhan Singh during his lifetime received his share in cash and left with no right, title or interest and also executed relinquishment deed dated 24.09.1977. After reply to the application was filed by the petitioner/plaintiff and having heard counsel for the parties, the application

was dismissed by the trial Court vide order dated 01.03.2014 (Annexure P-3).

The present application was filed by respondents No.2 and 3 on the premise that Baldev Singh son of Bhan Singh received cash amount from his parents and broke all ties with the family of Bhan Singh and relinquished his right in the property in question and executed a relinquishment deed (dastabardari) dated 24.09.1977 duly registered in the office of Sub Registrar vide document No.2403 Vahi No.1 Jild No.3260 page 217 dated 24.10.1977. The original document was in possession of Harbans Kaur and Bhan Singh (since deceased) and the same is not traceable despite best efforts. The applicants may be allowed to prove the document by producing certified copy thereof as the original is a registered document, maintained by public servant in due course of official duty and is more than 30 years old and therefore, there is no possibility of its tampering. The petitioner filed reply (Annexure P-5) and the trial Court decided the application in favour of the respondents vide order impugned.

Counsel for the petitioner has argued with vehemence that as plea of the respondents that Baldev Singh received the cash amount from his parents, broken ties with the family of Bhan Singh, relinquished his right in the property in question and executed a relinquishment deed dated 24.09.1977 is beyond pleadings and respondent No.3 was not permitted to amend the written statement in this regard vide order dated 01.03.2014 that has attained finality, the trial Court committed a gross error rather illegality by permitting the respondents to prove the alleged relinquishment deed by way of secondary evidence when otherwise the respondents were not entitled to produce and prove the original thereof. In support of his

contention, he has referred to judgments of this Court **Gurditta Vs. Balkar Singh and another**, 1989(1) PLR 418, **Joginder Pal Vs. Parduman Singh**, 1998(2) RCR (Civil) 633, **Pritam Singh and others Vs. Malkiat Singh and others**, 2010 (56) RCR (Civil) 665 and **M/s Dehar Vanshi Mini Rice Mills Vs. Rajender Kumar**, 2015 (5) RCR (Civil) 677.

Counsel for the contesting respondents, on the contrary, would submit that the respondents in the written statement, in preliminary objection No.2 have categorically pleaded that after death of Bhan Singh, suit property was inherited by Sukhdev Singh and Hardev Singh (sons), Harbans Kaur (widow) and Rajinder Kaur (grand-daughter) in equal share and further pleaded with regard to the sales made by Harbans Kaur and others and the subsequent owners. Counsel has vehemently argued that as the respondents have pleaded the factum of suit property being exclusively inherited by two sons, widow and a grand-daughter of deceased Bhan Singh, evidence sought to be adduced by proving the relinquishment deed dated 24.09.1977 executed by Baldev Singh another son of Bhan Singh is a step in the direction of proving the averments set up in the written statement. In addition, it is argued that a party to the *lis* is not obligated to plead the evidence by which a fact would be proved at an appropriate stage of the proceedings. Further submitted that the relinquishment deed is a registered document, more than 30 years old and its certified copy has been obtained from the office of Sub Registrar concerned, therefore, the document being a public document is admissible in evidence under Section 74 of the Indian Evidence Act, 1872. In support of his contentions, he has

referred to judgment of this Court **Anupam Jain Vs. Smt. Kulwant Gupta**, CR No.2991 of 2012 decided on 09.03.2015.

I have heard counsel for the parties, perused the paper-book particularly the order dated 01.03.2016 dismissing the application for amendment of the written statement and the order impugned.

Before advertng to the rival submissions made by counsel for the parties, it would be appropriate to deal with the judgments cited by counsel. In Gurditta's case (supra), application for leading secondary evidence to prove agreement to sell was allowed and the order passed by the trial Court was challenged by way of revision. This Court held, reads as under:-

“5... Thus, taking into consideration the facts and circumstances of the case and the fact that the said agreement to sell was never pleaded in the written statement, there was no occasion for the court to allow the defendant to lead secondary evidence, particularly when the existence of the original document was not proved. The observations made by the trial court that the secondary evidence is allowed subject to his proving the due execution of the agreement and loss thereof was wholly irrelevant because the secondary evidence could be allowed only if the existence of the original agreement was proved in the first instance...”

In Joginder Pal's case (supra), application for secondary evidence in regard to Chakota receipt and agreement dated 14.11.1995 filed by the petitioners-plaintiffs was dismissed by the trial Court and the order was challenged before this Court. The Court held that it is not disputed that in the plaint, agreement alleged to have been pleaded was dated 27.02.1979 whereas the agreement sought to be proved by secondary evidence is dated 19.01.1979. Similarly, about the alleged payment of chakota, date and amount of the chakota receipts were not pleaded in the plaint. Keeping in view these facts, the trial Court came to the conclusion

that the plaintiffs/petitioners were not entitled to lead secondary evidence with regard to documents which were not correctly pleaded in the plaint nor list of documents containing the particulars of those documents was filed along with the plaint. Held that reasons given by the trial Court are valid and the impugned order does not call for any interference under Section 115 CPC.

In Pritam Singh and others case (supra), the trial Court permitted the plaintiffs to lead secondary evidence with regard to bahi entry to prove redemption of mortgage. The order passed by the trial Court in this regard was set aside with the observations that the plaintiffs cannot be permitted to lead secondary evidence of bahi writings dated 14.06.1963 because there is no reference to any mortgage or redemption thereof much less to the bahi writings in question in the pleadings of the plaintiffs. Consequently, even primary evidence of the said bahi writings cannot be permitted in the absence of pleadings and therefore, the question of permitting the plaintiffs to lead secondary evidence of the said bahi writings do not arise, being completely beyond pleadings.

In M/s Dehar Vanshi Mini Rice Mills' case (supra), the defendant had not disclosed or averred that there was a receipt executed by the plaintiff at the time when payment of the amount was made. This Court held that it is well settled that evidence beyond pleadings cannot be considered and it also cannot be believed that if the defendant had made the payment to the plaintiff against a receipt, he would not have mentioned this fact in the written statement.

Now coming to the judgment referred to by counsel for the respondents, the plaintiff in that case had approached this Court to express

his grievance against rejection of a document (copy of affidavit) tendered as secondary evidence before the trial Court in order to prove readiness and willingness of the petitioner/plaintiff to perform his part of the agreement in a suit for specific performance of agreement to sell. This Court held that “if there is averment regarding readiness and willingness, how that readiness is to be proved is invariably a matter of evidence. The fact that the plaintiff did not aver in the plaint that he had the affidavit of his presence noted and marked as very material, for, as I have already said that the proof of readiness and willingness is a matter of evidence. If the document contains an endorsement of the Sub-Registrar with his seal, the copy produced with the seal must be received if the plaintiff states that the original was missing.”

This brings the Court to the controversy raised in the present case. The petitioner/plaintiff claimed that Smt. Prakash Kaur etc. inherited the suit property from Sardar Bhan Singh and mutation No.51782 was sanctioned in their favour and he purchased the property from Smt. Parkash Kaur etc. It is not the plea of the petitioner/plaintiff that Smt. Parkash Kaur etc. inherited the suit property through Sh. Baldev Singh. The respondents, in the written statement, had raised a plea that property of Bhan Singh was inherited by his two sons, widow and a grand-daughter. There is no reference that deceased Bhan Singh had another son namely Baldev Singh and as to why the suit property was not inherited by Sh. Baldev Singh or Smt. Parkash Kaur and others, legal heirs of deceased Baldev Singh. However, it is not clear if Baldev Singh pre-deceased his father Sardar Bhan Singh or otherwise.

Indisputably, plea of the respondents to amend the written statement to plead additional facts with regard to Baldev Singh having left with no right, title or interest and executed a relinquishment deed dated 24.09.1977 was dismissed by the trial Court and the order has attained finality. If the respondents are allowed to adduce evidence with regard to the relinquishment deed, it would amount to over-reaching the earlier order dismissing prayer of the respondents for amendment of the written statement. If the respondents are right in their submission that they could adduce evidence with regard to the relinquishment deed dated 24.09.1977 for proving the averments raised in original written statement, where was the occasion for them to file an application seeking amendment in the written statement to allege the factum of relinquishment of rights by Sh. Baldev Singh. On the contrary, relinquishment of right in the suit property by Sh. Baldev Singh is altogether alien to the facts pleaded in the written statement, therefore, evidence sought to be adduced by way of secondary evidence is clearly beyond pleadings and cannot be permitted.

Examined from another angle, the petitioner has pleaded that property of Bhan Singh was inherited by Smt. Parkash Kaur and others whereas the respondents have taken the plea that it was inherited by Sukhdev Singh and others. The respondents are competent to adduce evidence as to how the suit property has been inherited by Sukhdev Singh and others. Had the respondents taken a plea that Baldev Singh was another son of Bhan Singh and he was excluded from inheritance, they would have been entitle to adduce evidence to prove relinquishment deed by relying upon what has been held in Anupam Jain's case (supra). The judgments cited by counsel for the petitioner supports the view that

evidence beyond pleadings can neither be considered nor can be permitted to be adduced by way of secondary evidence. In view of the above, the impugned order cannot be allowed to sustain and is accordingly set aside.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the application for secondary evidence is dismissed.

NOVEMBER 10, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no