

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5105 of 2015

Date of Decision:20.1.2016

Ram Kishan

---Petitioner

vs.

Sher Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ajay Jain, Advocate
for the petitioner

Mr. J.P.Sharma, Advocate
for respondents No. 1 to 9

Mr. Sandeep K.Yadav, Advocate
for respondents No. 9-A and 10

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition lays challenge to order dated 27.7.2015 (Annexure P-7) passed by the Civil Judge (Junior Division), Narnaul whereby the compromise Ex. CX (Annexure P-6) has been held to be illegal and not as per law.

A brief backdrop of the case is that Richhpal son of Kanha

predecessor-in-interest of respondents No. 1 to 9 and Ram Kishan petitioner alongwith his brothers Yad Ram and Ram Niwas sons of Prabhu Dayal were joint owners in possession of land measuring 182 Kanals 5 marlas situated at village Nuri Awwal as per jamabandi for the year 1973-74. The said land was partitioned between said Richhpal and Ram Kishan etc. and in this regard, mutation No. 635 dated 26.10.1975 was sanctioned and separate khewats were formed. As per partition, though Ram Kishan etc. were in possession of khasra Nos. 127/1, 129/1 but in the revenue record, the same was incorporated in the name of Richhpal. Similarly, though Richhpal was in possession of khasra No. 127/2 and 129/2, however, names of Ram Kishan etc. were there in the revenue record. To rectify the mistake, civil suit bearing No. 526 dated 29.1.1980 titled "Richhpal vs. Ram Niwas etc." was filed which was decided in terms of compromise dated 31.1.1984 arrived at between the parties vide judgment and decree dated 31.1.1984. As per compromise dated 31.1.1984, khasra Nos. 127/1 measuring 11 marlas and 129/1 measuring 10 marlas, total 1 kanal 1 marla was held to be owned and possessed by Ram Kishan etc. and they were held entitled to get necessary correction made in their names. Likewise, khasra Nos. 127/2 measuring 10 marlas and 129/2 measuring 11 marlas, total 1 kanal 1 marla was held to be owned and possessed by predecessor in interest of respondents No. 1 to 9 i.e. Richhpal son of Kanha.

During pendency of civil suit No. 526/1980, a suit for partition was filed bearing No. 519 dated 7.10.1982 titled "Ram Niwas vs. Ram Kishan etc.". The said suit was disposed of in terms of compromise dated 9.5.1983 arrived at amongst the brothers vide judgment and decree dated

11.5.1983. As per compromise dated 9.5.1983, khasra Nos. 127/2(0-10), 129/2 (0-11) which were earlier in the names of Ram Kishan etc. would be owned by Ram Kishan @ Sita Ram alone. Certain other terms and conditions were also agreed between the parties which are not relevant for the present controversy. After decision in civil suit No. 526 of 1980, the revenue records were not changed and continued to reflect the old scenario.

The petitioner filed a civil suit in the year 2010, for declaration to the effect that he is owner in possession of land comprised in khewat No. 87 khatauni No. 119 khasra No. 127/1(0-11), 129/1(0-10) total measuring 1 kanal 1 marla as per jamabandi for the year 2008-09. The petitioner and respondents No. 1 to 9 arrived at a compromise Ex. CX (Annexure P-6) and in terms thereof, prayed for disposal of the suit but Yad Ram respondent No. 9-A raised an objection by claiming that all the three brothers are entitled to a share in khasra Nos. 127/1, 129/1, therefore, compromise Ex. CX entered into between the petitioner and respondents Nos. 1 to 9 cannot be given effect to.

After hearing counsel for the parties, the learned trial court passed the impugned order dated 27.7.2005 by holding that the agreement/settlement arrived at between the petitioner and respondents No. 1 to 9 seems to be illegal as share of brothers of the petitioner has not been mentioned therein and no decree can be passed in accordance with the said compromise. The trial court decided to proceed with the suit and called upon the petitioner to produce his evidence.

Feeling aggrieved by the order passed by the learned trial court, the the matter has been carried before this Court.

Counsel for the petitioner has submitted that in view of the compromise effected between the petitioner and his two brothers, the land jointly owned by them was partitioned and as per the said compromise, land comprising khasra No. 127/2 (0-10), 129/2(0-11) total measuring 1 kanal 1 marla had fallen to the share of the petitioner. It is further argued that the said compromise deed culminated in the judgment and decree dated 11.5.1983 and the same has attained finality. It is argued with vehemence that though in the compromise dated 31.1.1984, basis of the judgment and decree dated 31.1.1984, khasra Nos. 127/1, 129/1 measuring 1 kanal 1 marla were decided to be owned and possessed by Ram Kishan etc. and khasra Nos. 127/2, 129/2 total measuring 1 kanal 1 marla held to be owned and possessed by Richhpal but necessary correction was not carried in the revenue records, necessitating filing of the present suit in which compromise Ex. CX was effected between Ram Kishan and legal representatives of Richhpal to avoid any confusion in future and to get the records straightened in consonance with ownership and possession of the parties in respect of aforesaid khasra numbers.

Counsel for applicant Yad Ram (respondent No. 9-A but later given up before the trial court), on the contrary, has submitted that Yad Ram was initially arrayed as one of the plaintiffs, later transposed as defendant No. 9-A but further later given up alongwith Ram Niwas, his brother (defendant No. 10) with a mischievous design to keep them aside and settle the matter with successors of Richhpal. The compromise effected in the year 1984, basis of the judgment and the decree dated 31.1.1984 superseded the compromise dated 9.5.1983, effected between the petitioner and his brothers

namely Yad Ram and Ram Niwas and the learned trial court has rightly refused to accept the compromise Ex. CX, in the circumstances of the case.

I have heard counsel for the parties and perused the records with their able assistance.

Be that as it may, the dispute inter se Ram Kishan and his brothers qua partition of their joint land stood settled vide compromise dated 9.5.1983 (Annexure P1) and land detailed in sub para C of para 2, including khasra Nos. 127(2) (0-10) and 129/2 (0-11) had fallen to the share of Ram Niwas @ Sita Ram, agreed to be owner in possession thereof. Subsequent thereto, there remained no dispute amongst Ram Kishan and others (all the three brothers) qua their joint land except the fact that the revenue records were not got corrected in the light of compromise effected in civil suit filed by Richhpal against Ram Niwas etc. and there was also no dispute that khasra Nos. 127(1) and 129(1) had fallen to the share of Ram Niwas etc. so far as the dispute inter se Richhpal and Ram Niwas etc. was concerned. As khasra No. 127(2) and 129(2) had fallen to the share of Ram Kishan at the time of partition amongst the brothers, Ram Kishan alone was entitled to land of khasra No. 127(1) and 129(1) viz-a-viz khasra No. 127(2) and 129(2) to be left by him in favour of successors of Richhpal. Yad Ram can neither be allowed to re-open the partition, already effected amongst the brothers nor can he be allowed to agitate that he has a share in khasra No. 127(1) and 129(1) by raising an unfounded plea that compromise dated 9.5.1983 stood clouded by compromise dated 31.1.1984. It appears that Yad Ram has become greedy and wants to stake his claim in khasra No. 127 (1) and 129(1), taking advantage of failure of the parties in civil suit

decided on 31.1.1984 to seek necessary correction in the revenue record. Analyzed from any angle, Yad Ram or Ram Niwas cannot be allowed to hijack the proceedings of civil suit titled “Ram Niwas vs. Sher Singh and others” as well as compromise Ex. CX, effected in that suit.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the trial court is directed to decide the suit on the basis of compromise Ex. CX, in accordance with law.

(Rekha Mittal)
Judge

20.1.2016
paramjit