

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2251 of 1987 (O&M)
Date of Decision : 29.11.2016

Gurbax Kaur and others

....Appellants

Versus

Bhag Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.R. Mittal, Senior Advocate
with Mr. Kashmir Singh, Advocate
for the appellants.

Mr. Kanwal Goyal, Advocate
for the respondents.

Surinder Gupta, J.

Joint land of parties was finally partitioned by Revenue Authorities vide order dated 29.01.1974 (Ex. P-1). Appeal against order of partition filed by Karam Singh, predecessor-in-interest of plaintiffs was dismissed by Collector, Phagwara vide order dated 08.10.1974 (Ex. P-19). Plaintiffs, who are sons and daughters of Karam Singh filed present suit on 29.08.1980 seeking declaration and relief of injunction as follows:-

- (i) Plaintiffs and defendants no. 21 to 32 are the owners in possession of land of *khata* no. 195, *khatauni* no. 275 to 334, measuring 314 *kanals* 5 *marlas* as per *jamabandi* for the year 1970-71 and of *khasra* no. 56 (8-0) *khata* no. 190/330 situated in village Chachoki, *Tehsil* Phagwara, District Kapurthala;
- (ii) Defendants no. 1 to 20 have got no right, title and interest in the land and the partition proceedings taken out by these defendants vide files nos. 2/T and 1/T of

02.03.1972, are illegal, null and void and not binding on the right of plaintiffs and defendants no. 21 to 32;

- (iii) Allotment of specific *khasra* no. 42 (5-1), 70 (0-11), 41/2 (3-17) total measuring 9 *kanals* 9 *marlas* and a part of land bearing *khasra* no. 56 (8-0) i.e. 2 *kanals* 4 *marlas* to the defendants or either of them in the partition proceedings, is illegal, void, ineffective qua the right of plaintiffs;
- (iv) For permanent injunction against defendants no. 1 to 20, restraining them from executing the order passed by revenue authorities in partition proceeding and dispossessing plaintiffs from above referred land or to get the mutation sanctioned in their favour.

2. Admittedly, Fateh Singh was common ancestor of parties, who had two sons, namely, Sunder Singh and Jaimal Singh. Plaintiffs and defendants no. 21 to 29 are successors-in-interest of Jaimal Singh and defendants no. 1 to 20 are heirs of Sunder Singh. Shares of Jaimal Singh and Sunder Singh in the suit land are not in dispute.

3. Plaintiffs have alleged that defendants no. 1 to 20 and their predecessors-in-interest effected so many transfers of joint *khata*, which exceeded their shares. The civil suit was filed by one of their transferees wherein it was held that defendants no. 1 to 20 have sold the land more than their share. Those findings have become conclusive. After consolidation, *khata* of parties was kept joint without taking note of individual transfers made by co-sharers. The land acquired by Jaimal Singh in his individual capacity was also put in joint hotch-potch. Plaintiffs and defendants no. 21

to 32 are in exclusive possession of suit land. However, taking undue benefit of the entries in the revenue record defendants no. 1 to 20 filed partition proceedings where the question of title was raised but the revenue authorities without taking care of this fact ordered final partition of the joint property.

4. Contesting defendants denied averments of plaintiffs *inter alia* pleading that suit seeking this very relief was earlier filed by plaintiffs on 07.06.1975, which was dismissed on 24.08.1977. They again filed another suit which was also dismissed on 30.08.1980. Plaintiffs are challenging mode of partition and this matter falls within the exclusive jurisdiction of the revenue authorities. All other averments were contested, controverted and denied.

5. Pleadings of parties led to framing of the issues as follows:-

- (1) Whether the plaintiffs are owners in possession of the land in suit? OPP
- (2) Whether the plaintiffs are entitled to the injunction prayed for? OPP
- (3) Whether the suit is not maintainable in the present form? OPD
- (4) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
- (5) Whether the suit is bad for multifariousness? OPD
- (6) Whether the suit is barred by the principle of *res judicata*? OPD
- (7) Whether the suit is hit by the provisions of order XXIII Rule 1 CPC? OPD

(8-A) Whether the suit is barred by time? OPD

(8) Whether this Court has no jurisdiction to try the present suit? OPD

(9) Relief

6. Issue no. (1) was very vital issue and learned Sub Judge Ist Class on perusal of revenue record recorded the finding that the share of Kartara, Faqira and Bhana etc. was 112 *kanals* 18 *marlas* and they have already sold 113 *kanals* 13 *marlas* i.e. 15 *marlas* more than their share. In this manner Kartara, predecessor-in-interest of defendants no. 1 to 8 and Faqira, predecessor-in-interest of defendants no. 9 to 16 and Bhana, predecessor-in-interest of defendants no. 17 to 20 had sold the land more than their share. While making above observation, learned Sub Judge, Ist Class referred to observations in the judgment dated 09.03.1984 (Ex. P-27) passed by Sub Judge, Ist Class, Phagwara in suit filed by Sadhu Singh against Channan Singh son of Sunder Singh, Karam Singh, Nirmal Singh sons of Gurditta, Shanti wife of late Gurditta, Rattan Kaur, Nissi, Channo, Gejo daughters of Gurditta, Swaran Singh son of Sama, Bhagtu son of Milkhi, Bhana, Faqiria, Kartara sons of Sunder Singh. It was a suit filed by Sadhu Singh seeking the relief of mandatory injunction, which was dismissed. In that judgment it was observed that Faqiria and Kartara etc. to whom plaintiff Sadhu Singh was a successor, have already sold their share in the joint holding. The suit pertained to a vacant *taur* measuring 8 *marlas* comprised in *khasra* no. 1145 situated in village Chachoki. It was in that suit that some documents were produced as Ex. DC to Ex. DE. The predecessor-in-interest of plaintiffs were though party but they have not contested the same. Ist Appellate Court again looked into this aspect and

observed in para 11 of the judgment as follows:-

“11.The judgment (Ex. P-27) was given in a suit Sadhu Singh vs. Chanan Singh etc. Faqiria, Kartara and Bhagatu, who were defendants in the suit sold certain taur measuring 8 marlas to one Darshan Lal who in turn had sold to Sadhu Singh on 05.01.1958. Sadhu Singh filed a suit in which it was held that Bhagatu had $1/8^{\text{th}}$ share in the taur and Faqiria, Kartara and Bhana had $3/8^{\text{th}}$ share while the other belonged to Swaran Singh and Karam Singh etc. A decree for joint possession was given to Sadhu Singh. This matter was decided on 22.12.1960. Sadhu Singh then sought to obtain a mandatory injunction against Chanan Singh who had constructed a house in the said taur. In the course of the judgment Ex. P-27 under issue no. 4, the learned Sub Judge made reference to some earlier decree Ex. DX and then in para no. 8 made observations that Faqiria and Kartara etc. had already sold more than three share as it so appeared from some note in the excerpt. It is interesting to note that para no. 8 contained only the observations and not a finding to the effect that Kartar, Faqiria etc. were not really left with any share in the taur when they sold the same to Sadhu Singh. The finding is given in para 9 and it was held that earlier judgment was binding on the then parties and plaintiff Sadhu Singh was held to be a co-sharer to the

extent of 3/8th share in the taur subject to the final determination of the shares in the partition proceedings. This issue was decided in favour of Sadhu Singh who had purchased the taur from Faqiria and Kartara etc. It will be further seen that there was no issue inter se between the then defendants and as there was no such controversy between the defendants of Ex. P-27 there was hardly any question of the decision being res judicata on any of the defendants. The mere observations in the judgment without any consequence could hardly amount to a finding which need have been challenged especially when there was no controversy between the defendants inter se. This apart it will be seen that Bhana was not one of the vendees with Faqiria and Kartara and as such the successor of Bhana cannot be in any way affected even by the observations, I therefore, conclude that the respondent-plaintiffs cannot get any benefit from the judgment Ex. P-27.”

7. I have heard learned counsel for parties and have perused the paper-book and lower Court record with their assistance.

8. Learned counsel for appellants has argued that there is mistake in order passed by revenue authorities and the same can be rectified by the civil court. To support his submissions, he has placed reliance on the observations of this Court in case of **Harbans Singh vs. State of Punjab and others, 1973 PLJ 261**. Referring to judgment (Ex. P-27), he argued that though the suit filed by Sadhu Singh was dismissed vide this judgment but

observations were made against predecessors-in-interest of plaintiffs to the effect that they have already sold more than their share in joint land. They could file appeal against those observations but allowed the adverse observation against them in the judgment to attain finality. He has also argued that question of title was involved in the partition proceedings and the revenue authorities were not competent to proceed further without deciding the question of title or directing the parties to get the same decided from civil court.

9. First question, which arises for consideration, is as to whether there was any adverse finding against defendants no. 1 to 20 in the judgment passed in suit filed by Sadhu Singh? This matter has been discussed in detail by the Ist Appellate Court and I find no error of law and fact in the finding of the Ist Appellate Court in para 11 of the judgment of Ist Appellate Court, quoted in para 6 above, calling for any interference in this appeal. It was a suit for mandatory injunction, which was dismissed. Faqiria and Kartara sons of Sunder Singh were defendants in that suit. There was no clash of interest of defendants in that suit. Even otherwise, if any adverse observation has been made against predecessor-in-interest of defendants, they had no right to file appeal against the adverse finding, as the appeal is maintainable against the judgment and decree and not against the adverse finding returned against them by the trial Court. This matter was discussed in detailed by a coordinate Bench of this Court in case of **Mukhtiar Singh and another vs. Nishan Singh and others, 2006 (4) RCR (Civil) 133**, wherein it was observed as follows:-

“9. Without going into any factual gamut of the case, learned Counsel for the appellants has confined his contention on a legal issue, namely, could an appeal be

*filed by the defendants merely against a finding returned against them by the trial Court even though the suit was finally dismissed. Referring to Section 96 C.P.C., it is contended by the learned Counsel for the appellants that an appeal lies from a "decree" only and no decree having been passed against respondents No. 1 and 2 by the trial Court, their appeal against some of the findings was not maintainable. He has also referred to Order 41 Rule 22 C.P.C. to contend that the conclusions drawn by the civil court while deciding issues No. 3, 4 and 6 too could be assailed by respondents No. 1 and 2 only if the plaintiffs had preferred any appeal against the decree passed against them. In support of his contention, learned Counsel has relied upon two judgments of the Hon'ble Supreme Court in :- (i) **Smt. Ganga Bai v. Vijay Kumar and Ors.**, AIR 1974 Supreme Court 1126; and (ii) **Banarsi and Ors. v. Ram Phal**, 2003 (2) RCR (Civil) 248 (SC) : JT 2003 (5) SC 224.*

In Smt. Ganga Bai's case (supra), which was decided prior to the 1976 amendment in the C.P.C, their Lordships of the Supreme Court held as follows:

“17. These provisions show that under the Code of Civil Procedure, an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by Order 43 Rule 1. No appeal can lie against a mere finding for the simple reason that the code does not provide for any such appeal. It must follow

that First Appeal No. 72 of 1959 filed by defendants 2 and 3 was not maintainable as it was directed against a mere finding recorded by the trial Court."

In Banarsi's case (supra), the Apex Court after observing that, "appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment," further observed that, "CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference". It further concluded that:

- 8. Sections 96 and 100 of the C.P.C. make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See: Phoolchand and Anr. v. Gopal Lal, Smt. Jatan Kanwar Golcha v. Golcha Properties (P) Ltd. and Smt. Ganga Bai v. Vijay Kumar and Ors. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.*

(emphasis applied)

It, thus, stands crystalized that where the trial Court dismisses a suit and no decree, partly or otherwise, prejudicial to the interest of the defendants is passed, no appeal can be filed by the defendants even against the findings recorded against them.”

10. In the case of **Konda Lakshman Bapuji vs. The State of A.P. and others, 1977 AIR (A.P.) 427**, relied upon by learned counsel for appellants, a Division Bench of Andhra Pradesh High Court held that the appeal lie against the decree and not against the adverse finding. It was, however, observed that appeal against the finding can be preferred if it operates as *res judicata* and is binding on a party in future. In this case, the finding recorded are not binding or are hit by the principle of *res judicata* because parties to that suit and in this suit are different, subject matter is different and in view of the law settled in ***Konda Lakshman's case (supra)***, the party against whom observation has been made could not challenge the said observation by filing an appeal.

11. Once the finding recorded in the judgment (Ex. P-27) are kept aside, learned counsel for the appellant has no issue to raise about the question of title of parties in the suit land. Despite repeated queries, he could not make out as to what is the basis of claim by plaintiffs that defendants no. 1 to 20 or their predecessors-in-interest sold the land more than their share. Admittedly, revenue authorities have passed final order of partition as per entries in the revenue record, which have never been challenged by plaintiffs. The consolidation proceedings have also attained finality and were never challenged by plaintiffs. It is nowhere the case of plaintiffs that partition of land by revenue authorities is not as per share of

parties reflected in the *jamabandi*. Learned counsel for appellants has failed to point out as to which sale by defendants no. 1 to 20 or by their predecessors-in-interest were not considered by the revenue authorities. There is no dispute with regard to observations of a coordinate Bench of this Court in *Harbans Singh's case (supra)* that civil court can rectify the mistake in the decision of the revenue officer but learned counsel for appellants has failed to point any mistake committed by revenue authorities, who have acted within their domain while finalizing the partition proceedings, which could not be challenged before the civil court.

12. As a sequel of my above discussion, I find no legal or factual infirmity in the judgment passed by Ist Appellate Court calling for any interference in this second appeal. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

November 29, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No