

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.199 of 1988 (O&M)

Date of Decision: December 2nd, 2016

Sardar Singh & others

...Appellants

Versus

Fateh Singh (since deceased) through L.Rs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Vijay Sharma, Advocate,
for the appellants.

Mr.Sudhir Mittal, Advocate,
for the respondents.

AMIT RAWAL, J.

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiff seeking declaration to the effect that the alienation of the land detailed in Paras 7, 8 and 9 of the plaint being null & void and not binding upon the reversionary rights of the plaintiff on the premise that the same was sold by Baru without any legal necessity and consideration, has been decreed.

Mr.Vijay Sharma, learned counsel for the appellant-defendants submitted that the Courts below have erred in deciding the issues in the absence of any documentary and oral evidence on record. In fact, Ex.P4 to Ex.P7 have not been proved and, therefore, no reliance can be placed on the said documents as the same were not admissible in evidence. The translation of the aforementioned documents has not seen the light of the day. The

Courts below have erroneously formed an opinion without looking into the contents of the same. The statement of DW-1 cannot be regarded as admission in order to prove issue No.2. In fact, the onus lied upon the respondent-plaintiff to establish that the suit property at the hands of Baru Ram was ancestral and coparcenary in nature. The Courts below have further misinterpreted and misconstrued the documentary evidence, much less as per the settled law once the property was not proved to be ancestral, the sale deed could not have been challenged. It was barred by law of limitation as the suit was instituted in the year 1971, whereas the sale deed is of 1957. Registered document carries a presumption of truth and cannot be set-aside in the absence of the evidence on record. During consolidation and post consolidation, khasra numbers do not tally as per the sale deed and, therefore, in view of the non-resemblance of the khasra numbers, the property could not be branded as ancestral.

He further submitted that as per mutation No.30 22.4.1923, (Ex.P8) of Musadi son of Tuliya, the great ancestor, the total area regarding Khewat Nos.3 and 5 was 111 bighas and 7 biswas and 22 bighas and 6 biswas and, thus, the share of Musadi was 1/5th. The jamabandi for the year 1922-23 (Ex.P9) regarding Khewat No.2, Khatauni No.11 shows Jot Ram son of Musadi ½ share and Mangu and Chhaju sons of Bhagwana ½ share. The total share comes to 98 bighas 6 bishwas. In fact, respondent-plaintiff has failed to place on record the jamabandies from 1928 to 1949 as jamabandi Ex.P10 pertains to the year 1926-27, whereas the total area of the land in favour of Jot Ram son of Musadi is 107 bighas 14 biswas (Khewat No.2/2, Khatauni No.3. The area of Jot Ram son of Musadi as per jamabandi for the year 1950-51 (Ex.P11) comes to 646 bighas 0 biswa,

whereas as per sale deed dated 25.11.1957, Baru Ram on behalf of his minor brother Ram Singh sold the total area, i.e., 141 kanals 13 marlas to various vendees, i.e., the appellants bearing Muraba Nos.8 and 9, Killa No.1 to 5, 7-13, 14/2-14/3, 16 to 20. The new khasra numbers do not tally with the khasra numbers in the sale deed vis-a-vis the jamabandies aforementioned. The plaintiff has failed to produce on record the Excerpt report, which is required to be brought on record as per the High Court Rules and Regulations and the law laid down by this Court in **Banta Singh and others Versus Phuman Singh and another**, 1972 PLR 275. Thus, the findings of the Courts below are perverse and against the record. In fact, it is evident that the land comprised in the sale deed was purchased by Chhaju and Mangu and not from the land inherited from Musadi. The defendants have purchased the land by paying market rate to the father of the plaintiff and since then they are in possession of the said land.

He further submitted that the previously land measuring 133 bighas 13 biswas and purchased land by Chhaju and Mangu were clubbed together during consolidation and the total area of land increased to 1948 bighas 10 biswas of the family, i.e., Chhaju and Mangu ($\frac{1}{2}$ share) and Jot Ram ($\frac{1}{2}$ share). During consolidation, separate Khatauni Paimaish of Baru and Ram Singh was prepared and the area given to them was 575 kanals 2 marlas and a separate Khatauni was prepared of Chhaju and Jot Ram, which has not been produced by the respondent-plaintiff. The suit could not have been decreed and, thus, there is gross illegality and perversity in the concurrent findings.

Before I would advert to the argument of Mr.Sudhir Mittal, both the counsel during the course of the hearing have placed on record

translated copies of the jamabandies on record, which were in vernacular, i.e., in Urdu language. It is for the first time, this Court has been apprised of translated copies of the revenue record. The argument of Mr.Sharma, noticed above, was based upon the translated copies of the jamabandies, referred to above.

Per contra, Mr.Sudhir Mittal, learned counsel for the respondents submits that the concurrent findings cannot be interfered with, much less different opinion can not be formed unless and until there is gross illegality and perversity. No doubt, mutation No.30 dated 22.4.1923 (Ex.P8), had two parcels of land, i.e., total 133 bighas 19 biswas, but jamabandi for the year 1950-51 (Ex.P11) shows total land measuring 949 bighas 29 biswas, actually 914 bighas 6 biswas plus $\frac{1}{2}$ share of 87 bighas 7 biswas. Mr.Mittal by referring to the translated copies of the same very documents, has drawn the attention of this Court to Column No.12 of the jamabandi for the year 1922-23 (Ex.P9) to show the inheritance of the property, therefore, the nature of the property being ancestral. He submits that both the Courts below have rightly formed an opinion that after consolidation, the land mentioned in document Ex.P4 was given in lieu of the land detailed in documents Ex.P11 to Ex.P14 and document Ex.P14 shows that Baru Ram and Ram Singh were the owners of the land detailed in para No.3 and 4 of the plaint. Thus, the property at the hands of Baru Ram was ancestral and he could not have sold it as no legal necessity has been proved or in existence and, therefore, the sale deed has rightly been set-aside. There is no limitation for claiming inheritance of the ancestral property and, therefore, the suit was within limitation.

I have heard the learned counsel for the parties and appraised

the paper book.

No doubt, the suit is of the year 1971 and the appeal is stated to be pending since 1988, but both the parties presented their claims without getting the documents, heavily relied upon by them, translated much less referred to before the Courts below only in Urdu language. Both the Courts did not have an occasion to go through the vernacular ones as sought to be projected before this Court. Even lot of time was consumed in understanding the controversy, but I am of the view that instead of pondering upon the issues on merits since valuable rights of the parties are involved, I deem it appropriate to remand the matter back to the Lower Appellate Court by fixing time line as in case the appellants have some case or vice-versa, either of the parties to the lis has a statutory right of consideration before the Lower Appellate Court being the last Court of fact and law. The wisdom in undertaking the exercise of translating the revenue record should have been dawned at the relevant time when the appeal was pending before the Lower Appellate Court if not before the trial Court. The judgments of both the Courts do not reflect any of the aforementioned facts as raised by Mr.Sharma and Mr.Mittal except exhibits.

In my view, the Courts below should have insisted upon the parties to furnish the vernacular of the same before deciding the controversy. Be that as it may, I am of the view that the matter requires to be remitted back to the Lower Appellate Court with a further direction to decide the controversy as expeditiously as possible, preferably within a period of six months and the translated copies of the exhibited documents produced by the appellant-defendants and the respondent-plaintiff be also sent back with liberty to the parties to refer the same to place on record in

accordance with law for the adjudication for the lis.

The parties, through their counsel, are directed to appear before
the concerned Lower Appellate Court on 15.12.2016.

Appeal stands disposed of.

December 2nd, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No