

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

**ESA No.11 of 2016
Decided on: 08.02.2016**

Sukhdev Singh

....Appellant

Versus

Jagir Kaur and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Prateek Sodhi, Advocate
for the appellant/petitioner.

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

REKHA MITTAL J. (Oral)

The present appeal has been directed against the order dated 04.12.2015 passed by the Additional District Judge, Amritsar whereby the order dated 21.10.2014 passed by the Civil Judge (Junior Division), Amritsar, dismissing the objections filed by respondents against the judgment and decree dated 09.08.2007, has been set-aside and the objection petition filed by the respondents has been allowed.

Counsel for the appellant/petitioner would contend that a decree for specific performance of an agreement to sell dated 05.08.2003 in respect of land measuring 8 kanals bearing Khasra No.66/19 min (4-0), 17/1 min (4-0) situated at village Hoshiar

Nagar, Sub Tehsil Attari, District Amritsar, has been passed in favour of the petitioner against Sawinder Singh-JD. The sale deed in pursuance of the decree has been executed in favour of the petitioner through process of the Court and the petitioner has been delivered symbolic possession of the decretal land.

The respondents preferred an objection petition primarily on the plea that Sawinder Singh sold 19 kanals 3 marlas of land out of total land measuring 92 kanals 11 marlas situated at village Hoshiar Nagar in favour of Meja Singh and delivered possession thereof to Meja Singh. Mutation on the basis of aforesaid sale deed was sanctioned in favour of Meja Singh. Meja Singh died on 19.09.2013 and the objectors being his widow and sons have inherited him and became owner in possession of the suit land.

Counsel for the petitioner contends that the Appellate Court has wrongly upheld the correctness and validity of sale deed dated 27.11.2003 propounded by the objectors. The Court has not decided the shareholding of Sawinder Singh in the joint land measuring 92 kanals 11 marlas, therefore, a prejudice may be caused to the petitioner in case during partition, it was found that Sawinder Singh was not left with ownership right in land measuring 92 kanals 11 marlas to the extent of 19 kanals 3 marlas at the time of alleged sale in favour of Meja Singh on 27.11.2003.

It is further argued that Sawinder Singh agreed to sell specific khasra numbers qua 8 kanals of land in respect whereof claim of the petitioner has been allowed vide judgment and decree passed in his favour that has attained finality. The last submission made by counsel is that Sawinder Singh sold 8 kanals of land comprised in Khasra Nos.66//19 min (4-0) 17/1 min (4-0) that came to his (Sawinder's) exclusive possession in a family partition, therefore, the petitioner is entitled to obtain actual possession of the said land in execution of the decree dated 09.08.2007.

I have heard counsel for the petitioner, perused the records particularly the order passed by the Appellate Court.

On a pointed query raised by the Court, counsel for the petitioner is not in a position to contend that Sawinder Singh-JD is recorded to be in exclusive possession of land agreed to be sold in his favour, as per the revenue record. He is also not in a position to counter the observations made by the Appellate Court that no mutation of alleged family partition whereby the khasra numbers in question might have come to his (Sawinder's) share is recorded in the revenue record. In the sale deed executed in favour of the petitioner through Court, symbolic possession is stated to have been delivered to him and that he will take actual possession himself. The Court has taken into consideration Jamabandis for the year 2003-04 and 2008-09 wherein Sawinder Singh is recorded as

co-owner in a joint khata measuring 92 kanals 11 marlas including land of khasra No.66//19 min and 17/1 min. As the JD through whom the petitioner is claiming rights in the suit property is not recorded to be in exclusive possession of the land in question, no fault can be found in the order impugned holding that actual possession can be delivered in favour of the decree-holder only by way of partition of the joint khata.

Counsel for the petitioner has a serious grievance to express in regard to finding of the Court *qua* sale deed dated 27.11.2003, set-up by the objectors. Firstly, no plea was raised before the Appellate Court that Sawinder Singh was not co-owner to the extent of 19 kanals 3 marlas of land out of joint khata measuring 92 kanals 11 marlas, after taking into consideration 8 kanals of land agreed to be sold in favour of the petitioner. Secondly, the petitioner is nobody to challenge the sale deed allegedly executed by Sawinder Singh in favour of Meja Singh as the petitioner is not claiming any right of inheritance through Sawinder Singh. In view of the above, I do not find any merit in the contentions of the petitioner when otherwise there is no error much less illegality in the impugned order.

For the foregoing reasons, the appeal is dismissed *in limine*.

08.02.2016
yakub

(REKHA MITTAL)
JUDGE