

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

RSA No.2031 of 2011 (O&M)

Date of Decision.17.08.2016

Gurbachan Singh (since deceased) through LRsAppellant

Vs.

The District Red Cross Society, Mukatsar and anotherRespondents

Present: Mr. Amit Jhanji, Advocate
for the appellant.

Mr. I.S. Maan, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J.

C.M. No.1932-C of 2014

The application for impleading the legal representatives of appellant-Gurbachan Singh is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

Amended memo of parties is taken on record and the registry is directed to put it at the appropriate place.

RSA No.2031 of 2011

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking possession of the plot measuring 2 kanals 8 marlas as shown in the plan attached with the plaint measuring 127'x85' in respect of khasra No.2147/1933 min/1022/2 situated within municipal limits of Mukatsar against new khasra No.2290/147/1933/102, had been dismissed by both the

Mr. Amit Jhanji, learned counsel for the appellant submits that the suit aforementioned was filed on the basis of title i.e that the appellant had purchased the plot from Sarmukh Singh and Jeet Singh vide registered sale deed dated 29.5.1970 and the plaintiff was under settled possession but the legal representatives of aforementioned persons started giving threats to dispossess the plaintiff from the suit plot. As per the averment in the plaint, the plaintiff was dispossessed in the month of February, 1998. Both the Courts below have dismissed the suit by going beyond the pleadings and evidence placed on record in arriving at a conclusion that Tara Singh and Harnam Singh, predecessors-in-interest of Sarmukh Singh and Jeet Singh had seven legal heirs each and on the basis of the shares, Sarmukh Singh and Jeet Singh had 1/7th share and the property sold to the appellants-plaintiffs was beyond their shares. The trial Court had not noticed the fact that it is admitted case of the party that the suit property came from the predecessors of Jeet Singh and Sarmukh Singh i.e. Harnam Singh and Tara Singh, who were co-owners of total land measuring 5144 kanals 7 marlas. The said assumption is, therefore, erroneous, much less, the original co-owners have not come forward to challenge the same and the defendants did not have locus standi.

He further submitted that the registered document carries a presumption of truth and same has gone unrefuted and therefore, the Courts below had no occasion to discard the sale deed. The conclusion was drawn by the trial court that there was an alteration on the sale deed by writing figure 1022 in hand against khasra No.2147/1933min on comparison of second original sale deed dated 29.05.1970 retained by the office of Sub Registrar, Ex.P1 but the fact remains that it was never pleaded case of the

defendants. The mutation bearing No.8023 dated 27.02.1995 was entered into but the original was not traceable in the revenue record and that could not have been the basis for non-suiting the appellant-plaintiff. The Courts below have erroneously relied upon the statement of DW1-Balraj Mehta, Record Keeper, who had brought the original jamabandi for the year 1946-47 and furnished attested copy as Ex.D1. The Punjabi translation of the same contained 33 pages *viz-a-viz* 102 pages in Urdu script. The Courts below further ignored the fact that the defendants-respondents were not in possession and as well as did not establish their possession as they failed to examine any witness in this regard, in essence, the evidence of the defendants-respondents was beyond pleadings, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

Mr. I.S. Maan, learned counsel appearing for the respondents-defendants submitted that the suit was barred under the provisions of Order 2 Rule 2 CPC. Jeet Singh and Sarmukh Singh had no right to sell the property and mutation entered on the basis of sale deed, was null and void, as the mutation relied upon by the plaintiff was not attested by the Collector or Kanungo. It is further case of the respondents-defendants that Jeet Singh and Sarmukh Singh had already sold 111/3 marlas of plot on 19.05.1969, more than their share to Surinder Pal Singh and another and thus, they were left with no other property, much less, the title or interest as the total area of the khasra No.2147/1933/1022 as per the jamabandi for the year 1946-47 was 147772.05 sq. yards. As per the jamabandi for the year 1968-69, the total land owned by Tara Singh and Harnam Singh was 52 kanals 6 marlas.

Therefore, the total holding of khewat would be 5144 kanals 7 marlas and the total holding of *shamlat deh* would be 113974 sq. yards. Thus, Harnam Singh and Tara Singh were entitled to 1139 sq. yards and 1/7th share of the same i.e. 162 sq. yards they had already sold as noticed above and therefore, urges this Court for confirming the concurrent finding of fact rendered by both the Courts below by dismissing the appeal, as the same does not call for any interference.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Jhanji, learned counsel appearing for the appellant, for, in the original sale deed dated 29.05.1970, Ex.P1, there was an interpolation of figure 1022, in essence, the identity of the property did not tally with the property mentioned in the mutation. As per mutation No.8029, the land was mutated in favour of the Provincial Government. The plaintiffs have failed to prove that they were put into possession by the erstwhile vendors i.e. Sarmukh Singh and Jeet Singh. No evidence qua the dispossession had been proved on record. The share of Sarmukh Singh and Jeet Singh was 162 sq. yards i.e. to the extent of 1/7 share but they sold 111/3 marlas of land on 19.05.1969, in essence, the vendors have sold 350 sq. yards and as such, at the time of execution of sale deed dated 29.05.1970, Ex.P1, they were not having any title in the land measuring 2 kanals 8 marlas. It is settled law that a person who is not owner of the property cannot bequeath the same by way of registered document.

PW2, Gurbachan Singh admitted that some part of the suit land was in pond and some part was vacant. The demarcation report, Ex.P7, did not show land in dispute being part of the pond. Even the demarcation

report was not in accordance with High Court Rules and Regulations, as no fixed points were established, whereas on the contrary, as per the Punjabi translation of Ex.D1 i.e. Ex.D1/A, in the jamabandi for the year 1946-47 in Khatoni Nos.1589/1541, 1597/1543, 1626/1571, 1673, 1682 , the District Board had been shown as purchaser. Ex.D7, mutation dated 27.02.1995, mutation No.8023 reveals that Khatoni Nos.1676, 1634, 1755 and 1756 including the land bearing khasra Nos.2147/1933/1022 was owned by *shamlat deh* and was in possession of District Board.

In my view, the suit was also barred by limitation as the plaintiffs have failed to establish the date of dispossession. They relied on the sale deed dated 29.05.1970 as valid whereas the suit had been filed in the year 2000 i.e. after 30 years.

For the foregoing reasons, I do not find any illegality and perversity in the findings rendered by both the Courts below as the same are based on correct appreciation of oral and documentary evidence, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made out.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 17, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No