

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

RSA No.4748 of 2012 (O&M)

Date of decision : 28.07.2016

Balbir Singh and others

...Appellants

Versus

Puran and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sachin Mittal, Advocate for the appellants.

Mr. Sunil Garg, Advocate for the respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

CM No.13216-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 4 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby judgment and decree dated 23.12.2010 granting the decree to the effect that the sale deed dated

22.07.2002 has been held to be illegal, nonest and void, has been set aside.

Mr. Sachin Mittal, learned counsel appearing on behalf of appellant-plaintiff submits that Puran Singh son of Phusan Singh resident of Village Badshahpur, Tehsil and District Gurgaon by virtue of the judgment and decree dated 21.10.1976 relinquished his share to the extent of 320/1964 out of 640/1964 share and, thereafter vide judgment and decree dated 29.08.1995, entered into compromise with the appellant-plaintiff qua remaining shares and thus, was left with no right and interest in the property, therefore, sale deed aforementioned was nullity in the eyes of law but the lower Appellate Court has committed illegality and perversity as it has mis-interpreted judgment and decree dated 21.10.1976 and as well as 29.08.1995 and thus urges this Court to formulate the following substantial questions of law for determination:-

1. Whether the judgment and decree dated 29.08.1995 has been passed only to give effect to an earlier judgment and decree dated 21.10.1976 or both have an independent effect?

Mr. Sunil Garg, learned counsel appearing on behalf of respondent-defendant submits that there is no illegality and perversity in the judgment and findings rendered by the lower Appellate Court is perfect, legal and justified. No substantial question of law arises. In fact the respondent had only compromised with respect to 320/1964 share and not entire share and rightly so the Court dismissed the suit and upheld the sale deed. Puran Singh had lost 320/1964 share out of 640/1964 share, therefore, he was possessing 320/1964 share after passing of the judgment and decree and out of its share, he alienated 154/944 i.e. 7 kanals 14 marlas and thus

urges this Court for affirming of the findings under challenge.

He further referred to the pleadings and the previous suit filed in the year 1995 to contend that subsequent decree of 1995 i.e. 29.08.1995 (Ex.P-1) was only with regard to the giving effect to the judgment and decree dated 21.10.1976 in the revenue record as mutation regarding the decree could not be entered on time but was entered on 29.08.1986, therefore, could not be reflected in the subsequent jamabandies. It is on this account compromise note dated 29.08.1995 was executed, thus, 320/1964 share of the defendant No.1-Puran Singh lost through the judgment and decree dated 29.08.1995 was actually the same share which he lost vide judgment and decree dated 21.10.1976

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the submission of Mr. Mittal. Judgment and decree dated 29.08.1995 reads thus:-

“Present:- Shri T.C. Sapra, Advocate, for the plaintiffs.

Smt. Asha Birk, Advocate for the defendant.

JUDGMENT

The plaintiffs have filed this suit for declaration against the defendant that they are co-owners in joint possession of the suit land detailed in para no.1 of the plaint to the extent of 320/1964 share besides their other share in the suit land and the entry in the name of the defendant regarding 640/1964 shares in place of 320/1964 shares is wrong and is liable to be corrected.

2. The defendant filed WS admitting in toto the claim of the plaintiffs. Heard. Compromise Ex.C1 has also been placed on file. In view of compromise Ex.C1 suit of the plaintiffs is decreed in terms of compromise Ex.C1. Decree

sheet be prepared forming Ex.C1 as part of it. No orders as to costs. Consign.

Announced: 29.8.95

Sd/- SSJ, Gurgaon”

Whereas decree in respect of 21.10.1976, reads thus:-

“Present:- Plaintiff with Shri Rattan Lal Bhardwaj, Advocate.

Defendant Puran-Vendee with Shri Ram Parkash Malik, Advocate.

The copy of the judgment Ex.P4 and the copy of decree Ex.P5 produced by the learned counsel for the plaintiff. The parties have also filed a written compromise in this case. The compromise in my opinion is lawful. Let the statements of parties be recorded.

Sd/- IIIrd C.

Gurgaon, 21.10.76

Present:- Plaintiff with Shri Rattan Lal Bhardwaj, Advocate.

Defendant Puran-Vendee with Shri Ram Parkash Malik, Advocate.

Order:-

The statements of the parties have been recorded. The parties have also filed a written compromise Ex.C1. In view of the statements of the parties and the written compromise Ex.C1, the suit of the plaintiff for possession by pre-emption of the suit land detailed in para no.1 of the plaint, is, hereby decreed subject to payment of Rs.6117/- after deducting the 1/5th pre-emption amount already deposited by the plaintiff in the court. The plaintiff shall deposit the aforesaid amount in the court on or before 10.4.77 failing which the suit of the plaintiff shall be decreed to have been dismissed with costs. If the plaintiff shall deposit the abovesaid amount within time then the

parties shall bear their own cost of the suit. The plaintiff shall not be entitled to put the possession of the suit land before 10.4.77. The decree sheet be prepared and file be consigned to record room. The compromise Ex.C1 shall form the part of decree. The un-exhibited xxx xxx xxxx xxx xxxx xxxx

English Civil Form No.32

DECREE IN ORIGINAL SUIT

(Order XX, rule 6 and 7, of the Code of Civil Procedure)

xxx xxx

Claim for possession by pre-emption of xxx xxx

This suit coming on this day for final disposal before me (Sh. N.C. Nehta) IIIC, Gurgaon in the presence of Sh. Rattan Lal Bhardwaj, Advocate for the plaintiff and Sh. Ram Parkash Advocate for the defendant, it is ordered and decreed that the suit of the plaintiff for possession by pre-emption of the suit land subject to the payment of Rs.6117/- after deducting 1/5th pre-emption xxx xxx deposited by the plaintiff in that case. The plaintiff shall deposit the aforesaid amount in court on 10.4.77 failing which the suit of plaintiff shall be decreed to have been dismissed with costs. If the plaintiff should deposit the above said amount xxx xxx

Given under my hand and the seal of the Court, this 21st day of October, 1976.

Costs of Suits

<i>Plaintiff</i>	<i>Rs.</i>	<i>Defendant</i>
<i>1. Stamp for plaint</i>	<i>5</i>	<i>Stamp for power</i>
<i>2. Do for power</i>	<i>2</i>	<i>Do for petition</i>
<i>3. Do for exhibits</i>	<i>0</i>	<i>Pleader's fee</i>
<i>4. Pleader's fee</i>		
<i>on Rs.1361/-</i>	<i>8.75</i>	<i>Subsistence for witnesses</i>
<i>5. Subsistence for</i>		

Witnesses	26	Service of process
6. Commissioner's fee	--	Commissioner's fee
7. Service of process	3.75	
	45.50	

Khewat No.638, Khaitta No.832, 834, Rect. No.160, Killa No.11/2 (0-6), 2 (2-0), 13(4-2), 14(8-0), 19(8-0), 20(8-0), 22(6-0), Rect. No.170 Killa No.1/2(9-0), 2(8-0), Rect. No.160, Killa No.13(3-0), 48/1, total measuring 49 kanals 2 marlas to the extent of 320/1964 measuring 8 kanals in Village Badshahpur, Tehsil and District Gurgaon for payment of Rs.3000/-”

The aforementioned judgment and decree came to be passed on the basis of the averments in the suit in the year 1995. Averments made in the paragraph Nos.2 to 5 of the suit of the appellant-plaintiff, read thus:-

“2. That the father of the plaintiffs Shri Chandgi Ram had sold his 320/1964 share in the suit land as per jamabandi for the year 1970-71 vide registered sale deed dated 11.11.1974 to the defendant. In this manner the defendant had become the co-owner in joint possession of the suit land to the extent of 640/1964 shares. It may be mentioned here that the defendant was already having 320/1964 shares in the suit land and he has purchased 320/1964 shares from Shri Chandgi Ram, making his total shares in the land to the extent of 640/1964 shares.

3. That Ram Kishan plaintiff had pre-empted the said sale in the civil suit titled as Ram Kishan Vs. Chandgi Ram etc. and his suit was decreed by the court of Sub Judge Gurgaon vide judgment and decree dated 21.10.1976. It is submitted that the pre-emption money i.e. sale consideration was deposited by him and the possession of the suit land of that case was taken. It is further submitted

that necessary intimation regarding the said case was given to the village Patwari and he had assured that the entries in the name of Ram Kishan to the extent of that share would be corrected. However, very recently the plaintiffs have come to know that the defendant is still continuing to be co-owner to the extent of 640/1964 shares in place of 320/1964 shares and the share of Ram Kishan had not been recorded in his name in the revenue records. Thus the revenue records are liable to be corrected.

4. *That the pre-emption money was deposited jointly by all the plaintiffs and subsequently the plaintiffs had in family settlement agreed that all of them were the joint owners of this share in the suit land to the extent of 1/5th share each. Thus, in this manner, the plaintiffs are coming co-owners in joint possession of the suit land in equal shares.*

5. *That though the plaintiffs are the co-owners in joint possession of the suit land to the extent of 320/1964 shares besides their other share in the suit land and the share of the defendant has been wrongly recorded as 640/1964 in place of 320/1964 shares. Thus, the revenue record in this respect is liable to be corrected. However, the defendant is not admitting the claim of the plaintiffs. Hence, the present suit.”*

thus, suit at the instance of the respondent-plaintiff seeking declaration and consequential relief has rightly been dismissed. On perusal of abovementioned paras, it is irresistibly concluded that judgment and decree dated 29.08.1995 Ex.P1, the defendant No.1 had only compromised in respect of 320/1964 share and not with regard to the entire 640/1964 as alleged, therefore, the claim of the appellant-plaintiff with regard to the entire share was wholly erroneous and perverse and do not have substance,

much less, justification, I am of the view that lower Appellate Court has rightly set aside the judgment and decree rendered by the trial Court. In other words, as per the decree of 21.10.1976 and 29.08.1995, defendant No.1-Puran Singh was divested all title and share only to the extent of 320/1964 share out of his 640/1964 share. This aspect was not noticed by the trial Court but the lower Appellate Court being the last Court of fact and law after examining the oral and documentary evidence, much less, the pleadings in my view has rightly set aside the judgment and decree.

For the foregoing reasons, I do not find illegality and perversity in the judgment and decree rendered by both the Courts below and the question of law as noticed above is answered against the appellant-plaintiff and in favour of respondent-defendant.

Resultantly, appeal is dismissed.

28.07.2016
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:- **Yes**

Whether reportable:- **Yes/No**