

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

**R.S.A No.1182 of 2013 (O&M)
Date of decision :17.10.2016**

Smt. Panmeshwari and others

..... Appellants

Versus

Murari and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ramesh Kumar, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 06.11.2012 passed by the learned Additional District Judge, Bhiwani, whereby the appeal filed by appellants-defendants against the judgment and decree dated 15.03.2010 passed by the learned Addl. Civil Judge (Sr. Division), Bhiwani, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiffs-respondents have filed the suit for declaration to the effect that they are owners in possession of the suit land measuring 90 kanals 8 marlas detailed and described in the head note of the plaint situated in the revenue estate of village Dhareru Tehsil and District Bhiwani as per their respective shares and that defendants have no concern with the title or possession of the aforesaid land. The revenue entries in which the defendants have been shown as owners are against law and facts and are liable to be corrected accordingly. In the

consequential relief, they have also sought the decree for permanent injunction restraining the defendants from interfering into the ownership and possession of the plaintiffs over the land in dispute on the basis of the illegal revenue entries and also restraining them from alienating the suit property.

4. As per averments in the plaint, the parties to the suit are the members of the same family. Tara Chand was their predecessor-in-interest. He was owner in possession of the land measuring 173 kanals 17 marlas detailed and described in para no.2 of the plaint situated at Village Dhareru Tehsil and District Bhiwani. Many years prior to the consolidation, said Tara Chand disappeared. His absence was shown in the revenue record and his son Bal Mukand was shown to be the owner of $\frac{1}{2}$ share of the estate of Tara Chand and remaining $\frac{1}{2}$ share was entered in the name of Chunna, Bishnu sons and Smt. Para, widow of Ramanand son of Tara Chand. After consolidation proceedings, Chunna, Bishnu and Smt. Para got partitioned their khewat and khewat of Bal Mukand and Tara Chand was separated. During the consolidation proceedings Bal Mukand was given the land measuring 83 kanals 9 marlas comprised of specific khasra numbers mentioned in the plaint. Similarly, Chunna, Bishnu and Smt. Para were also given the land measuring 90 kanals 8 marlas detailed and described in the plaint. The entries in this regard were also made in the revenue record. Tara Chand had disappeared before coming into operation of the Hindu Succession Act, 1956. Therefore, his inheritance was not mutated in favour of his daughters. Mutation no. 851 dated 23.03.1971 regarding inheritance of Tara Chand was sanctioned on

06.03.1971 to the extent of ½ share in favour of Bal Mukand son of Tara Chand and ½ share in favour of Chunna, Bishnu and Smt. Para. After sanctioning of the said mutation, the suit land was wrongly shown as joint between the parties in the revenue record despite the fact that the same was already partitioned during the consolidation proceedings. Taking the benefit of the wrong entries in the revenue record, defendants no.1 to 5 moved an application to Assistant Collector IIInd Grade, Bhiwani for partition of the land. In the said application it was ordered to get the question of title decided from the Civil Court. Thereafter, defendants no.1 to 5 filed the civil suit titled as Panmeshwari etc. Vs. Chunna, which was decreed vide judgment and decree dated 20.01.1992 by the learned Sub Judge Ist Class, Bhiwani. Plaintiffs preferred an appeal against the judgment and decree dated 20.01.1992 and the said appeal was accepted by the learned Additional District Judge, Bhiwani vide judgment and decree dated 06.04.1994 and it was held that plaintiffs are owners in possession of the suit land after the consolidation proceedings. In the meanwhile, Smt. Para, widow of Ramanand has died. Plaintiffs have inherited her estate. Similarly, Chunna has also expired and his estate was inherited by Dhanpat and Devi Dutt sons of Chunna. Devi Dutt had also expired. Shanti, his widow inherited his estate. In this way, the plaintiffs are owners in possession of the suit land. Hence the suit.

5. Appellants-defendants contested the suit on the grounds *inter alia* that Bal Mukand and Chunna, Bishnu sons and Smt. Para, widow of Ramanand are coming to be recorded as owners in possession

of the land measuring 155 kanals 16 marlas situated at village Dhareru Tehsil and District Bhiwani to the extent of $\frac{1}{2}$ share each. They further pleaded that Bal Mukand was also owner in possession of the land measuring 18 kanals 1 marla. So, in this way, he was owner to the extent of $\frac{1}{2}$ share of the total land measuring 173 kanals 17 marlas. In the same manner Chunna, Bishnu and Smt. Para were the owners in possession of $\frac{1}{2}$ share in the aforesaid land. After the death of Bal Mukand, Chunna and Smt. Para, Devi Dutt, Dhanpat sons of Chunna son of Tara Chand became owners of $\frac{5}{24}$ shares. Bishnu son of Ramanand son of Tara Chand became owner in possession of $\frac{5}{24}$ share. Maman son of Smt. Narayani daughter of Ramanand and Sarti daughter of Ramanand son of Tara Chand became owners in possession of $\frac{1}{24}$ shares each. Smt. Panmeshwari widow of Amar Singh son of Bal Mukand became owner in possession of $\frac{1}{30}$ share. Krishan, Balram sons of Amar Singh and Bal Mukand became owner in possession of $\frac{7}{15}$ share of the land measuring 155 kanals 16 marlas. It is further pleaded that Savitri, Bhateri daughters of Amar Singh son of Bal Mukand, Smt. Chandri daughter of Bal Mukand, Kamla and Bimla daughters of Leelu Ram son of Smt. Shanti daughter of Bal Mukand have given their shares in family settlement to defendants Krishan and Balram vide mutation no. 1693. After disappearance of Tara Chand, plaintiff got the same entered in the revenue record. Tara Chand had disappeared about 70 years back and at that time he was 40 years of age. Chunna Lal, Bishnu, sons and Smt. Para, widow of Tara Chand were entitled to $\frac{1}{2}$ share in the suit land and Bal Mukand son of Tara Chand was entitled to receive $\frac{1}{2}$ share. With

these pleas, appellants-defendants pleaded for dismissal of the suit.

6. Defendant no. 5 filed the separate written statement and contested the suit almost on the similar pleas as raised by the remaining defendants.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff no.1 is owner in possession to the extent of $\frac{1}{2}$ share and plaintiff no.2 and 3 are owners in possession of remaining $\frac{1}{2}$ share of land measuring 90 kanals 8 marlas situated at village Dhareru, tehsil and District Bhiwani as detailed in the head note of the plaint?OPP
2. Whether the names of the defendants have wrongly been mentioned in the revenue record regarding the property in question?OPP
3. Whether the plaintiffs are entitled to any injunction as prayed for?OPD
4. Whether the plaintiffs have no cause of action to file the present suit?OPD
5. Whether the suit is time barred?OPD
6. Whether the suit is not maintainable in the present form?OPD
7. Whether the judgment and decree dated 06.04.1994 is wrong and facts on the grounds as alleged in the written statement?OPD
8. Relief.

8. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the suit of the plaintiffs-respondents was decreed by the learned trial Court vide impugned judgment and decree dated 15.03.2010. Plaintiff no.1 was declared as owner in possession to the extent of one half share and plaintiffs no.2 and 3 were declared as owners in possession of remaining one half share in the suit land measuring 90 kanals 8 marlas. It was further held that defendants have no concern whatsoever with the ownership and possession of the suit property and the revenue entries are liable to be corrected accordingly. Consequently, defendants were restrained from alienating the suit land in any manner to any other person and the

judgment and decree dated 06.04.1994 was declared legal and valid and the same was binding on the rights of the defendants.

9. Aggrieved with the aforesaid judgment and decree dated 15.03.2010, appellants-defendants preferred the appeal. The same was dismissed by the learned Additional District Judge, Bhiwani vide impugned judgment and decree dated 06.11.2012. Hence this Regular Second Appeal.

10. I have heard Mr. Ramesh Kumar, Advocate, learned counsel for the appellants and have carefully gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellants contended that the suit filed by the plaintiffs itself was not maintainable as the decree was already passed in their favour in the previous suit. They could have executed that decree instead of filing the subsequent suit i.e. the present suit. He contended that as the rights of the parties were already adjudicated upon in the previous suit, so the second suit was barred by the principle of *res judicata*. At the most, plaintiffs-respondents could have sought the execution of the decree passed in the previous suit. Thus, he pleaded that the decrees passed by the learned Courts below suffers from legal infirmity.

12. I have duly considered the aforesaid contentions.

13. As per the admitted fact, the parties to the suit belongs to the same family. Tara Chand was their predecessor-in-interest. As per the revenue record said Tara Chand was owner in possession of the land measuring 173 kanals 17 marlas. It is not disputed that said Tara Chand has disappeared many years prior to the consolidation proceedings in the

village and therefore shown as absentee in the revenue record. As a result thereof Bal Mukand son of Tara Chand shown as owner of $\frac{1}{2}$ share of estate of Tara Chand and $\frac{1}{2}$ share was entered in the names of Chunna, Bishnu sons and Smt. Para, widow of Ramanand son of Tara Chand. During the consolidation proceedings their khewat was partitioned. It is evident from the revenue record that Bal Mukand was given the land measuring 83 kanals 9 marlas comprised of khasra no. 15//3/2 (7-0) 4 (8-0) 7/1(6-4) 8/1 (5-9) and 30 //16 (6-16) 24 (6-16), 30//25 (7-19) and 115/9(8-0) 10/2(5-10) 11/1(6-12) 20/2(6-5), 1 (6-16) 10/1 (2-2). Similarly, Chunna, Bishnu and Smt. Para were allotted the land measuring 90 kanals 8 marlas comprised of khasra no. and killa nos. 29//20(7-7) 21 (8-0) and 41//1(8-0) 10 (8-0) 63//23/2 (013) and 67//3 (8-0) 7 (8-0) 115//3 (707) 4 (6-16) 8 (8-0) 13/1 (3-2) 2 (7-7) and 237 (1-11) 562 (0-5). Thus, two separate khewats came into existence. The mutation regarding inheritance of Tara Chand bearing no. 851 was sanctioned to the extent of $\frac{1}{2}$ share in favour of Bal Mukand son of Tara Chand and $\frac{1}{2}$ share in favour of Chunna, Bishnu and Smt. Para in equal shares. But, the suit land in the said mutation was shown joint despite the fact that the same was already partitioned during the consolidation proceedings. Taking the benefit of said entries in the revenue record, appellants-defendants no.1 to 5 moved an application to the Assistant Collector IInd Grade, Bhiwani for partition of the land. But, the learned Assistant Collector IInd Grade, Bhiwani directed the parties to get the question of title decided from the Civil Court. Thereafter, appellants-defendants no.1 to 5 filed the suit, which was decreed in their favour by the learned Sub-

Judge Ist Class, Bhiwani vide judgment dated 20.01.1992 (Copy Ex.P-29). Feeling aggrieved with the said judgment and decree dated 20.01.1992, present plaintiffs preferred the appeal, which was accepted by the learned Additional District Judge, Bhiwani vide judgment dated 06.04.1994 (copy Ex.P-33) and the judgment dated 20.01.1992 passed by the learned Sub Judge Ist Class, Bhiwani was set aside. It was ordered that plaintiffs were owners in possession of the suit land after the consolidation proceedings and suit land was already partitioned in two khewats. Thus, the said judgment and decree passed by the learned Additional District Judge, Bhiwani had attained finality as the same was not challenged by way of appeal and is binding on the parties. As per the said judgment, mutation entries were wrongly incorporated in mutation no.851 (Copy Ex.P-17). Consequently, plaintiff no.1 was proved to be the owner in possession to the extent of $\frac{1}{2}$ share and plaintiffs no.2 and 3 were proved to be owners in possession of the remaining $\frac{1}{2}$ share of the land measuring 90 kanals 8 marlas.

14. Once, it is established that plaintiff no.1 is owner in possession of $\frac{1}{2}$ share and plaintiffs no.2 and 3 are also owners in possession of $\frac{1}{2}$ share of the suit land measuring 90 kanals 8 marlas, so, the revenue entries showing otherwise are wrong, illegal and are liable to be corrected in favour of the plaintiffs accordingly and defendants have no concern with the aforesaid land.

15. Appellants-defendants have nowhere pleaded in the written statement that the present suit is barred by law/ *res judicata*. The plea of *res judicata* is not a pure question of law. It is a mixed question of law

infacts and cannot be raised for the first time in the second appeal. Moreover, the previous suit was filed by the appellants-defendants. The same was decreed by the learned trial Court vide judgment and decree dated 20.01.1992. But, in the appeal preferred by the plaintiffs-respondents, the said judgment and decree passed by the learned trial Court was set aside by the learned Additional District Judge, Bhiwani vide judgment and decree dated 06.04.1994 and the suit filed by the appellants-defendants was dismissed. So, there was no decree in the previous suit in favour of the plaintiffs-respondents which could be executed by them. Thus, the plea raised by learned counsel for the appellants-defendants that the present suit is not maintainable and is barred by law, carries no substance.

16. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 17, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No