

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.3261 of 2013 (O&M)

Date of decision:5.5.2016

Madan Lal and another

... Appellants

versus

Dev Raj

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

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

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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AMOL RATTAN SINGH, J. (Oral)

1. This is the second appeal of the defendants, in a suit filed by the plaintiff (respondent herein), that was decreed in his favour by the learned Civil Judge (Junior Division), Pehowa and the first appeal against that judgment and decree was dismissed by the learned Additional District Judge, Kurukshetra, vide the impugned judgment.

2. The case set up by the respondent-plaintiff was that the suit land beneath the construction on it was purchased by his father, vide a sale deed dated 21.11.1978, after which construction was raised upon it.

It was contended that the suit property was given to the plaintiff in a family settlement, pursuant to which a decree was also passed in favour of the plaintiff, in Civil Suit No. 366 of 1995, titled as **Dev Raj** vs. **Piara Singh** etc. Two electricity connections, one residential and one commercial,

were also taken in the name of the plaintiff in the suit property, of which he claimed that he was in exclusive possession. It was further contended that due to illiteracy and ignorance of the law, the plaintiff and his father did not get their names entered in the revenue record.

Alternatively, it was contended that if the ownership of the plaintiff is not proved, even though asserted, he had become the owner of the suit property by way of adverse possession.

3. The plaintiff had impleaded the General Public as the first defendant and the present two appellants (husband and wife) as defendants No. 2 and 3.

Upon notice issued to the defendants, defendants No. 2 and 3 (present appellants) filed a joint written statement taking preliminary objections on the maintainability of the suit, *locus standi* of the plaintiff and non-joinder of necessary parties. It was also contended that the appellants-defendants (hereinafter referred to as defendants) are *bona fide* purchasers of the suit property, with consideration.

On merits, it was stated that the suit property had not been correctly described in the plaint and that the alleged sale deed dated 21.11.1978 was also null and void. The purchase of the property by the father of the plaintiff was denied, and the sale deed was alleged to be a forged and fabricated document.

It was further contended that construction on the plot had been raised by the plaintiff only three or four years ago and that even the decree in Civil Suit No. 366/95 was null and void and otherwise also, was “hit by provisions of stamp and registration Act”.

It was also denied that the electricity connection in the residential portion was actually situated in the suit property and further, that the defendants had purchased land measuring 9 kanals and 9 marlas, vide different sale deeds dated 28.10.1987 and 08.06.1988, the latter amended vide Vasika No. 1121/1, dated 10.07.2001 and Vasika No.1120, also on 10.07.2001. The latter amended document related to the sale deed dated 08.06.1988 and the former document related to the sale deed dated 28.10.1987.

It was also denied that the plaintiff had become owner by way of adverse possession.

4. A counter-claim was also set up by the present appellants-defendants No. 2 and 3, claiming that they were owners/co-sharers in the suit property and that the plaintiff had illegally raised construction on it four years ago and was in unauthorized possession thereof. He had, in fact, been requested to admit the claim of the defendants and to hand over the suit property but had refused to do so.

Consequently, in the counter-claim, a decree for possession of the suit property was prayed for, with a further direction to the plaintiff to remove his “*Malba*” from the property.

5. The General Public was eventually proceeded against *ex parte* by the learned Civil Judge.

A replication was also filed by the plaintiff, controverting the contents of the written statement and the counter claim.

Consequently, the following issues were framed by that Court:-

1. Whether plaintiff is entitled to a decree for declaration as owner in possession over the suit property as prayed for?

OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no *locus standi* to file the present suit?OPD
4. Whether the defendants are co-sharer in the suit property?OPD
5. Whether the plaintiff has no right title or interest in the suit property? OPD
6. Whether the defendants' are entitled for a decree for possession in respect of the suit property? OPD
7. Whether the defendant are entitled to relief of mandatory injunction as prayed for? OPD
8. Relief.

An amendment to the written statement was allowed thereafter, and the following two issues were also framed:-

1. Whether the defendants are bona fide purchasers in the suit land? OPD
2. Whether the suit is bad for non-joinder of the necessary parties? OPD

6. The plaintiff examined six witnesses, the first of whom was one Raj Kumar, Document Writer, who proved sale deed No. 1822, dated 21.11.1978.

PW-2 was a Draftsman, Sukhpal, who proved the site plan, Ex. P2.

One Brij Bhushan appeared as PW-3 and also proved the aforesaid sale deed, Ex. P1.

The 4th witness for the plaintiff was Kulvinder Singh who proved an agreement dated 31.10.2003, as Ex. P3.

The following documents were also exhibited by the plaintiff:-

1. Ex. P4 Decree sheet dated 10.05.1995 in case Dev Raj vs. Puran Singh;
2. Ex. P5 Mutation No. 1267 dated 21.08.1990;
3. Ex. P6 Jamabandi for the year 1998-99;
4. Ex. P7 Jamabandi for the year 1968-69;
5. Ex. P8 Jamabandi for the year 1973-74;
6. Ex. P9 Jamabandi for the year 1978-79;
7. Ex. P10 Mutation No. 1483 dated 14.09.1995;
8. Ex. P11 Mutation No. 1267 dated 21.08.1990.

Thereafter, one Sat Parkash appeared as PW5 in support of the plaintiffs' case and finally, the plaintiff examined himself as PW-6, also tendered his affidavit, Ex. P6/A, reiterating the facts given in the plaint. He is also stated to have proved a certificate dated 26.03.2007 as Ex. PW6/B. He also stood in support of the electricity bills in his name, which were marked as X and Y by the Civil Judge.

7. The defendants examined seven witnesses, of whom defendant No. 2 (present appellant No. 1), Madan Lal, was the first. He also tendered his affidavit in support of his written statement and proved the following documents:-

1. Ex. D1 Supplementary registry (sale deed) No. 1120 dated 10.07.2001;
2. Ex. D2 Supplementary registry (sale deed) No. 1121 dated 10.07.2001;
3. Ex. D3 Mutation No. 1266 dated 21.08.1990;
4. Ex. D4 Mutation No. 1267 dated 21.08.1990;
5. Ex. D5 Mutation No. 1483 dated 14.09.1995;
6. Ex. D6 Sale deed No. 647 dated 08.06.1988;
7. Ex. D7 Sale deed No. 988 dated 28.10.1987.

One Ravinder Singh, clerk, appeared as DW-2 and also proved the documents Exs. D1 and D2.

DW-3 was Pawan Kumar, who proved the aforesaid documents, as also Exs. D6 and D7. Vishal Arora (DW-4) also proved Ex. D7 and one Harvinder (DW-5) also proved Ex. D6.

8. Pushpa Verma, a clerk in the office of the Deputy Commissioner, appeared as DW-6 and also proved the aforesaid two documents, i.e. Exs. D6 and D7.

Lastly, Draftsman Raj Kumar appeared as DW-7, again in support of the aforesaid two documents.

Other than the above, the following documents were also exhibited on two subsequent dates by the defendants:-

1. Ex. D8 Jamabandi for the year 1983-84;
2. Ex. D9 Jamabandi for the year 1988-89;
3. Ex. D10 Jamabandi for the year 1998-99;
4. Ex. D11 Jamabandi for the year 2003-04;
5. Ex. D12 Jamabandi for the year 2008-09;
6. Ex. D13 Jamabandi for the year 1993-94.

9. After considering the evidence led, the pleadings and the arguments, the learned Civil Judge found that the '*Jamabandies*' for the years 1968-69, 1973-74 and 1978-79 (Exs. P7 to P9), showed Jai Pal, Samer Pal, Hari Kishan and Jyoti Parkash as joint owners of the suit land. 10 marlas were purchased by the father of the plaintiff, Piara Singh, vide sale

deed Ex. P1, which stood fully proved by PWs 1 and 3. The sale deed was a duly registered document and it was further found by the learned Civil Judge that Piara Singh had suffered a decree (Ex. P4), in favour of his son, i.e. the plaintiff, after which the plaintiff came into possession of the suit land, vide an agreement, Ex. P3, dated 31.10.2003. (PW4, i.e. Kulvinder Singh, who was apparently the brother of the plaintiff) also stated that the said agreement was signed by all his brothers, whose signatures he proved and further testified that the electricity connection was also in the name of the plaintiff.

Similarly, the other witnesses also testified that the plaintiff was owner in possession of the suit property.

10. As regards the defendants, it was found by the learned Civil Judge that though two sale deeds dated 10.07.2001 (Exs. D1 and D2), as also the original sale deeds dated 08.06.1988 and 28.10.1987 (Exs. D6 and D7) had also been proved by DW-3; however, the said witness admitted in his cross-examination that the rice mill of the defendants and the flour mill of the plaintiff were separately constructed.

The second defendant (present appellant No. 1), however, denied having ever seen the flour mill of the plaintiff and testified that he had raised the construction of his factory on the land purchased by him but he had not had any site plan prepared in respect of the same.

The learned Civil Judge further found that the said defendant had no knowledge as to who were the owners of the property adjoining his rice mill and also did not know the father of the plaintiff.

He further admitted that he had not got the land that he had

purchased, partitioned, but had simply raised construction and taken possession of the property purchased by him.

The further cross-examination of appellant No. 1 was to the effect that somebody had taken possession of some part of the property and had built upon it three to four years ago, forcibly. However, he admitted that he had not filed any complaint before the police and had not even filed a case with regard to the same, in Court. He further admitted that he had also not got the demarcation done and did not know how much of the suit land was possessed by the plaintiff.

11. The learned Civil Judge further found that though the defendants had taken a stand in the written statement that the site plan relied upon by the plaintiff was not correct and that the decree of 1995 was also null and void, however, no evidence in that regard was led by them. They also could not prove that the sale deed of 1978 (Ex. P1) was a forged and fabricated document.

Hence, coming to the conclusion that the suit property, i.e. 10 marlas falling in Rect. No. 34, Killa No. 11/1/2/1 Min. and Rect. No. 35, Killa no. 15/1 Min, had been purchased by the father of the plaintiff about 10 years before that part of the property that was purchased by the defendants, it was held that the defendants had no right or interest in the plaintiffs' property, in view of the fact that upon the said 10 marlas a flour mill was operating since long, as admitted by PW-3, run by the plaintiff, with exclusive possession over the said property.

Consequently, the suit of the respondent-plaintiff was decreed and the counter-claim filed by the appellants-defendants was dismissed.

12. In the first appeal filed by the present appellants, the learned lower appellate Court found that vide the sale deeds dated 28.10.1987 (Ex. D7) and 08.06.1988 (Ex. D6), one Kamla Devi, widow of Jai Pal, alongwith Samer Pal, Hari Kishan and Jyoti Parsad, had all sold their respective shares of 9 kanals and 9 marlas in Rect. no. 35, Killa Nos. 6/2/2, measuring 6 kanals and 18 marlas, 7/1/2 measuring 01 marla, 14/2/2/1, measuring 6 marlas and 15/1, measuring 2 kanals and 4 marlas to the defendants. The same vendors had also sold their remaining share measuring 4 kanals and 15 marlas in the aforesaid khasra numbers to the defendants. However, in the sale deed dated 10.07.2001, Ex. D2, they had eschewed the name of one of the vendors, i.e. Jyoti Parsad.

It was also found that some land, out of the total land measuring 9 kanals and 9 marlas, had been sold to other persons vide various mutation numbers (given in the judgment of that Court). Hence, to make up that deficiency, out of Rect. Nos. 34 and 35 (killa No. 10/2/2 and 11/1/2/1 in Rect. No. 34 and Killa No. 6/2/2, 7/1/2, 14/2/2/1, 15/1 and 5/2/2/2 in Rect No. 35) the same land had been also sold. However, it was found that even by the subsequent sale, since the land belonging to Jyoti Parsad was not added to make up the deficiency, the exact measurement of land sold to the defendants could not be determined. An inference was therefore drawn by the learned lower appellant Court, that since the defendants themselves were not fully clear as to how much land they had purchased, they had not got any site plan prepared, nor had they got any demarcation done, and had simply asserted that since they had purchased 9 kanals and 9 marlas of the suit land from their vendors, hence the plaintiff

had actually encroached upon their land. However, they also could not prove as to how much land had been encroached upon by the plaintiff.

The testimonies of Dws 1 and 3 were referred to by the first appellate Court also, to eventually hold that as regards the 10 marlas purchased by the plaintiffs' father in the year 1978, there was no doubt that the flour mill had been erected thereupon and it could not be proved by the defendants that the plaintiff had actually demolished any part of their construction to establish his own construction on the said 10 marlas.

The sale deed dated 21.11.1978 showed the husband of Kamla Devi to be the vendor, with Kamla Devi having subsequently stepped into the shoes of her husband after his death. The said sale deed was held not to be a forged document, as it was duly registered and therefore, established the title of the plaintiffs' father, after which the plaintiff came into possession of the property.

13. Holding as above, the first appeal filed by the present appellants (defendants), was dismissed.

14. Before this Court, learned counsel for the appellants has made a wholly different argument, that the land being agricultural land, could not have been partitioned in proceedings before a civil Court, in view of the bar under Section 158 of the Punjab Land Revenue Act, 1887. However, he could not deny, as a matter of fact, that even the appellants-defendants admitted that they have constructed a factory over the part of the land occupied by them and the respondent-plaintiff is running a flour mill on the area occupied by him. As such, the land not being agricultural land, the question of applicability of the Punjab Land Revenue Act does not arise,

which bars the jurisdiction of a civil Court from entertaining all matters in which a revenue officer is empowered by the said Act, to dispose of or take cognizance of, i.e. matters as given in clauses (i) to (xxiii) of sub section (2) of Section 158 of the Act.

15. Learned counsel relies upon a judgment of a coordinate Bench of this Court in Jagga Singh vs. Surjeet Singh and others, 2000(3) RCR (Civil) 52, to support his contention to the above effect, that a civil Court cannot partition the land assessed to land revenue. However, this very judgment, in paragraphs 7 and 8 thereof, holds to the following effect:-

“7. Learned counsel for the plaintiff-respondents, on the other hand, submitted that they are recorded as co-sharers with the defendant-appellant and others in jamabandi Ex.P1 for the year 1986-87 and as such they could ask for its partition. It was submitted that if agricultural land is converted into residential plots and houses are constructed thereon, such land can be partitioned not by revenue court but by the civil Court because such land ceases to be agricultural land. In support of this contention, he drew my attention to Khushal Singh and others v. Gurdip Singh and others, 1987 PLJ 369 : 1987 RRR 469 (P&H). In Kalyan Dass v. Som Nath and others, 1987 RRR 48, it was held that “the civil Court will have jurisdiction to partition land, which has been built upon and houses and factories have come up, such land is not covered by “estate” assessed to payment of revenue. Such agricultural land will cease to be revenue estate.” He drew my attention to Rattan

and another v. Ram Saroop and another, 1989(1) RRR 484

where it was held that “where the plaintiff files suit for partition of gairmumkin bara and gairmumkin ghair in the civil Court and other agricultural land, which was also joint, was not included in the suit, suit cannot be dismissed on account of partial partition. Partition of agricultural land could be done by the civil Court. Civil Court shall not exercise jurisdiction over any of the following matters namely:- any claim for partition of an estate, holding or tenancy, or any question concerned with, or arising out of proceedings for partition, not being a question as to title in any of the property of which partition is sought.”

Vide Section 158(2) of the Punjab Land Revenue Act, 1887.

8. After going through the authorities cited at bar, I am of the view that there can be no manner of doubt that civil Court cannot partition land assessed to land revenue. Land assessed to land revenue can be partitioned only by the revenue officer.

Civil Court can partition agricultural land, which has been

converted into residential plots and houses have been

constructed thereon. It was gairmumkin plot, which was

sought to be partitioned through the civil Court. In application

for partition Ex.D1, Sukhdev Singh etc. had not included gairmumkin plot bearing Khasra Nos.471(5-2) and 683(0-2).

They had sought partition of the entire land measuring 154 kanals 15 marlas. In objection raised to the mode of partition

suggested in Naksha Be, Surjeet Singh etc. had averred that

they had not been given any portion of the valuable land adjoining to the village and in their tak, more of gairmumkin land had been allotted which is in excess of their share and that they had never been in possession of any gairmumkin area nor they were entitled to any gairmumkin area. This admission cannot be allowed to work against the interest of the plaintiff-respondents because this admission has been found to be erroneous when they are shown to be recorded as joint owners of the land in suit. Learned counsel for the appellant submitted that the suit is bad for partial partition inasmuch as plaintiffs had not sought partition of Khasra No.674 gairmumkin Muri (0-2). Suffice it to say, no such objection has been taken in the written statement. Even otherwise, it is a very small strip in which the plaintiffs have a very significant share. If the defendants had taken this objection in their written statement that the suit is bad for partial partition on account of non-inclusion of Khasra No.674 (0-2) gairmumkin rudi, plaintiffs could have thought of amending the plaint.”

(Emphasis in para 8 applied by this Court)

16. In view of the above, I do not see how the aforesaid judgment could apply to the case of the appellants, in view of the appellants' own admission that the land was actually not being used as agricultural land and as such, was not assessed to land revenue, it being 'gairmumkin' land on which buildings had actually been constructed, in the form of a flour mill and a factory.

This is other than the fact that no such plea is shown to have been raised before the Courts below.

17. Learned counsel next submits that co-sharers of the land were not made party before the civil Court, for partition of the land. Though otherwise that may have been a sustainable argument, however, in view of the fact that, admittedly, the respondent-plaintiff and before him his father, have been in possession of the suit land at least since 1978, pursuant to a sale deed executed in favour of the respondent-plaintiffs' father by the original owner, after which construction had been made thereupon and such sale deed, despite the contention of the appellants-defendants, could not be proved to be forged or fabricated, and two witnesses stood in favour of the respondent-plaintiff to submit that he had been in occupation of the land and had constructed upon it; and yet further, most importantly, the appellants-defendants also could not show that the suit land was included in the land purchased by them in the year 1987-88, as has been recorded in detail by the learned Courts below, to the effect that even a site plan had not been produced by the defendants, to show as to what 'exact part' of the land was occupied by them, I see no reason to interfere with the well reasoned judgments of those Courts, which are based upon an appraisal of facts, with regard to the extent of land purchased by the parties. This is especially so, when no other alleged co-sharer is shown to have been ever aggrieved of the possession and construction made by the respondent-plaintiff.

18. Thus, to conclude, with Courts below having decreed the suit of the plaintiff on a finding of fact, that the plaintiffs' father had purchased the suit land from the original vendor in 1978, by a duly proved sale deed,

and the defendants (appellants herein) could not prove exactly what part of the land they had purchased from their vendors (at least one of whom was the successor-in-interest of the plaintiffs' vendor), I see no error in the judgments of the Courts below. This is especially so because even if there was a double sale to the appellants, of some part of the land that was purchased by them, the plaintiffs' father having purchased such land about 10 years prior to the same land having been purchased by the appellants-defendants from the successor-in-interest of the plaintiffs' fathers' vendor, naturally the prior sale to the plaintiffs' father, in 1978, would not be rendered illegal or void, by a subsequent sale in favour of the defendants in 1987-88.

Hence, though the appellants-defendants have tried to make out two questions of law in this 2nd appeal, those questions don't arise at all in the present case, the real issue actually being wholly one based on the factual position on the ground, with regard to the area of the suit land actually purchased by the parties, at different points of time.

Consequently, finding no merit in this appeal, it is dismissed in *limine*, but with no order as to costs.

CM No.8769-C of 2013

19. In view of the fact that the appeal has been dismissed in *limine* as above, on merits, the question of condonation of the delay of 4 days in filing the appeal is rendered academic and is not gone into.

5.5.2016
nitin

(AMOL RATTAN SINGH)
JUDGE