

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

RSA No. 4179 of 2013 (O&M)

Date of Decision: 29.02.2016

Roor Singh

.....Appellant

Vs.

Simranjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Naiya Gill, Advocate,
for the appellant.

Mr. Puneet Jindal, Senior Advocate, with
Mr. Parambir Singh, Advocate,
for the respondents-caveator.

AMOL RATTAN SINGH, J. (ORAL)

This is the second appeal by one of the plaintiffs before the learned Civil Judge (Senior Division), Hoshiarpur, who had instituted a suit for declaration to the effect that they are exclusive owners in possession of land measuring 27 kanals 17 marlas (as detailed in the suit), falling to the share deceased Harbans Singh. They sought the said declaration claiming to be the successors and only legal heirs to the estate of Harbans Singh, who was stated to have died about 25 years prior to the filing of the suit (later said to be approximately in the year 1986).

2. As per the genealogical table shown in the judgment of the learned Civil Judge, the plaintiffs and Harbans Singh shared a

common ancestor (four generations removed) and since Harbans Singh and his brother Ruldu, were both said to have died unmarried and issueless, the plaintiffs claimed to be the sole legal heirs to their estate, (though the dispute is only qua the estate of Harbans Singh).

Consequently, they also sought that the mutation of inheritance sanctioned in favour of respondents-defendants No. 1 to 4, after the death of Harbans Singh, be declared to be null and void and the sale deed subsequently executed by the said respondents, on 26.04.2001, in favour of respondent No. 5, be also declared as such.

Respondents No. 1 to 4 had got the land mutated in their favour, claiming to be the widow and children of the Late Harbans Singh, stating that they were residing at village Visharat Nagar, Bilaspur, District Rampur, Uttar Pradesh.

3. As per the plaintiffs, the entire land remained under their cultivating possession as Harbans Singh had started living in Uttar Pradesh and had never cultivated any part of the land in occupation of the appellants, in District Hoshiarpur, Punjab, though he had visited the village where the land is situate, i.e. village Khakhli.

The suit land was inherited by Harbans Singh and his brother Ruldu from their forefathers and Ruldu too had died 25 years back. Ruldus' share, it was claimed by the appellants, was purchased by them vide a registered sale deed dated 13.01.1966.

4. According to the plaintiffs, Harbans Singh as a matter

of fact had not contracted any marriage, nor did he have any children and it was further alleged that respondents-defendants No. 1 to 4 were people of suspicious identity, who in connivance with one Jit Singh, had manipulated some certificate showing themselves to be the legal heirs of Harbans Singh.

It was further alleged that even during mutation proceedings, the '*Numberdar*' of the village did not attest the '*Shajra Nasab*' (genealogical table) and had not identified the said respondents to be the successors of Harbans Singh. Despite that, the mutation had been sanctioned in their name, and taking undue advantage of that fact, respondents No. 1 to 4 had sold 19 kanals out of the suit land to respondent No. 5, vide a sale deed dated 26.04.2001.

It was further alleged that as regards respondent No. 5, she and her husband are "very clever headstrong persons" who were in the habit of purchasing disputed properties at throw away prices and indulging in frivolous litigation.

5. Other than claiming to be the only legal heirs and successors of Harbans Singh, it was contended by the plaintiffs that even if respondents No. 1 to 4 are proved to be the legal heirs of Harbans Singh, they (plaintiffs) had become owners of 8 kanals and 10 marlas of the land, which had been mortgaged with them for more than 30 years, and had thus become non-redeemable by flux of time.

It was contended that a mortgage with possession was created by Harbans Singh on 22.10.1965 and never redeemed by

him.

6. Upon notice issued, respondents No. 1 to 3 filed a joint written and respondent No. 5 filed a separate written statement, with respondent No. 4 shown to have died. She is shown to be the daughter of respondent No.1 and sister of respondents No. 1 to 3. [Note-Though that is so, no legal heirs of the said respondent-defendant No. 4 were shown to be impleaded either before the learned Civil Judge or before the first Appellate Court, or even before this Court. Similarly, the 2nd plaintiff, Hazara Singh was not an appellant before the lower appellate court, or this Court.]

In the reply of respondents No. 1 to 3, other than the usual preliminary objections of misjoinder and maintainability etc., on merits the averments of the plaint were denied and it was stated that respondent-defendant No. 1 was also known as Simbal Kaur and respondent-defendant No. 3 (Rachpal Kaur), was also known by the name of Parminder Kaur.

They admitted that they were staying in District Rampur, which they proved by way of a voter card, ration card and a legal heirs certificate issued by the Collector, Rampur.

It was further contended by the said respondent-defendants that in fact, the plaintiffs were not related in any manner to Harbans Singh and as such, they (defendants) were exclusive owners in possession of the suit land, having inherited it from Harbans Singh. Therefore, the mutation in their favour and the sale deed executed by them in favour of respondent No.

5, were legal and valid and consequently, respondent No. 5 was now the owner in possession of the suit land.

The registered sale deed dated 13.01.1966, executed by Ruldu Singh in favour of the plaintiffs, was claimed to be inconsequential, not affecting the rights of the respondents-defendants.

It was further contended that one Gurmej Singh, resident of village Talwara, District Kapurthala, whose sister is married to appellant-plaintiff No. 1, had attacked the husband of respondent No. 5, Dr. Gurdial Singh and for that regard an FIR was also registered at Police Station Sadar, Hoshiarpur, for the commission of offences punishable under Sections 120-B, 323/324/325/326/307 etc. IPC.

7. Respondent-defendant No. 5, in her written statement, also took the same preliminary objections, and on merits contended that respondents No. 1 to 4 and Beant Kaur (not a party) were the widow and the children respectively, of Harbans Singh. She obviously supported the mutation dated 20.08.1986, issued by the Court of the Collector, Rampur, in favour of the first respondent-defendant, and further stated that the appeal filed against the said mutation, before the next revenue authority, had also been dismissed.

It was further stated that the suit land was purchased by respondent No. 5 after due verification of the revenue record and orders of revenue Courts and further, that if any mortgage was entered into by Harbans Singh, it had no concern with the

suit land.

Respondent No. 5 further contended in her written statement, that the SDM and Deputy Commissioner, Rampur (U.P.), had duly verified respondents-defendants No. 1 to 4 to be the legal heirs of Harbans Singh son of Gandu Singh, resident of village Visharat Nagar, Bilaspur, District Rampur and it was only thereafter, that the mutation had been sanctioned in favour of respondents No. 1 to 4.

Respondent No. 5 also countered, that actually it was the appellants who were "headstrong persons", who had know no respect for the law.

8. The learned Additional Civil Judge, thereafter framed the following issues:-

"1. Whether plaintiff is entitled to declaration that they are exclusive owners in possession of land of share of Harbans Singh measuring 27 kanals 17 marlas as detailed in head note of plaint and mutation No. 293 of inheritance of Harbans Singh sanctioned in favour of defendants No. 1 to 4 is illegal, null and void? OPP

2. Whether plaintiff is entitled to declaration that sale deed dated 26.04.2001 executed by defendant Nos. 1 to 4 in favour of defendant No. 5 is illegal, wrong without any right or title? OPP

3. Or in the alternative plaintiff is entitled to declaration that they are owners in possession of 8 kanals-10 marlas of share of Harbans Singh out of total land measuring 17 kanals situated in village Khakhli by efflux of time as the same has become non-redeemable? OPP

4. *Whether plaintiff is entitled to permanent injunction restrained defendant from interfering in possession of plaintiffs over total land of share of Harbans Singh? OPP*

5. *Whether suit is band for mis-joinder of necessary parties? OPP*

6. *Whether suit is not maintainable? OPP*

7. *Whether plaintiff has not come to Court with clean hands? OPP*

8. *Whether suit is properly valued for the purpose of court fee and jurisdiction? OPP*

9. *Relief."*

9. The plaintiffs examined as Pws 1, 2 and 3, respectively, Sham Singh, Gian Singh and plaintiff No. 1, Roor Singh. All these persons stated on affidavit and testified, that Harbans Singh had left the village ('*Khali*') and had started living in U.P. a long time ago and that he was unmarried and issueless. However, on cross-examination, PW-1 stated that though Harbans Singh had gone to U.P. 35-40 years ago, he did not know where he had settled. He also could not admit or deny whether Harbans Singh was married and had children in U.P., because he had never visited Harbans Singh or the place where he lived.

Similarly, PW-2 also admitted to Harbans Singh having last been seen about 35-40 years ago. Even plaintiff No. 1 himself, admitted that he did not know the address or residence of Harbans Singh in UP, but stated that he came to the village about 20-22 years ago.

10. Other than the above, the appellants-plaintiffs proved a certified copy of a mortgage deed (Ex. P-1) executed by Harbans Singh, a copy of an entry in a register as Ex. P-2, the sale deed dated 13.01.1966 as Ex. P-3, a copy of another entry in a register as Ex. P-4, the sale deed in favour of respondent No. 5 was exhibited as Ex. P-5 and a copy of an order dated 27.09.20014 as Ex. P-6; copies of '*Jamabandis*' for the year 1967-68, 1972-73, 1977-78, 1982-83, 1987-88, 1992-93, 1997-98 and 2002-03 as Exs. P-7 to P-14. Similarly, *Khasra Girdawaries* were also exhibited as Exs. P-15 to P-17. A certified copy of an order of the SDM-cum-Assistant Collector Ist Grade, Hoshiarpur was exhibited as Ex. P-18 and another order dated 28.02.2003 as Ex. P-19 and the statement of one Simarjit Banga was exhibited as Ex. P-20.

11. Respondent-defendant No. 5 stepped into the witness box as DW-1 and respondent No. 1 appeared as DW-2. They proved on record attested copies of the LRs' certificate issued to respondents No. 1 to 4, as DW-2/A, along with its receipt, DW2/B, copies of voter identity cards as DW-2/C and DW2/D, a certificate issued by a Member of the Nagar Palika Parishad, Bilaspur, Rampur (U.P.) as Ex. DW2/E, the death certificate of Harbans Singh as DW-2/F, a photocopy of an identity card as DW-2/G and the sale deed executed by respondent No. 1 as DW-2/H.

12. DW-2-respondent/defendant No. 1, Simarjit Kaur @ Simbal Kaur, corroborated her written statement and in cross-

examination stated that she was married in the year 1971 to Harbans Singh, at the age of 12 or 13 years. She gave the name of her parental village as Nareda near Rajpura, Punjab and further deposed that her father had died when she was very young and her mother had also died soon after her marriage (DW2's marriage). She gave the details of the family members of Harbans Singh, stating that he had one brother and three sisters and that Harbans Singhs' father had a brother by the name of Pir Mal. She further stated that Harbans Singh had died at village Visharat Nagar in the year 1996 and the Government had allotted certain property to them to live there on a vacant plot, on which they had constructed a '*Katcha*' house.

13. As regards the documentary evidence, the learned Additional Civil Judge found that the certified copy of the mortgage deed (Ex. P-1) executed by Harbans Singh, in favour of the appellants on 22.10.1965 was for an amount of Rs. 1,000/- which, as per the deed, could be redeemed in the month of '*Jeth*' of any years and thus, was not an irredeemable mortgage.

Ex. P-2 was found to be the mutation relating to that mortgage and Ex. P-3, the sale deed executed by Ruldu, brother of Harbans Singh, in favour of the plaintiffs. The said sale deed was an unregistered document which transferred property worth Rs. 2,000 on 13.01.1966 and, as held by the learned Civil Judge, it being of a value of more than Rs. 100, it did not confer any title on the vendees.

Ex. P-6 was found to be a certified copy of an order

passed by the Additional Civil Judge (Sr. Division), Hoshiarpur, dated 07.09.2001, in a civil suit in which a declaration was sought that the appellants-plaintiffs had become owners in possession of the same suit property to the extent of 8 kanals and 10 marlas by flux of time, (in respect of the mortgaged land).

It was also found that by the said order dated 07.09.2001, the plaintiffs were granted permission to file a fresh suit on the same cause of action.

The order of the learned Assistant Collector Ist Grade, Hoshiarpur, was one by which the applications of respondents-defendants No. 1 to 4, for getting the suit land mutated in their name was dismissed, but it was found by the learned Civil Judge that thereafter, on remand of the case, by an order Ex. PX, the property had eventually been mutated in their names.

The other documents were found to be not really relevant. The '*Jamabandis* and *Khasra Girdawari* (Exs. P-7 to P-17) were referred to but not discussed by the learned Civil Judge.

14. The first Court also found that the documents, DW-2/A to DW-2/G, produced by the respondents-defendants, i.e. the certificate and receipts issued by the District Authority, Rampur, proved respondent No. 1 to be the wife and respondents No. 2 to 4, the children, of Harbans Singh. Though these documents were objected to on ground of mode of proof, the same was rejected because, (in the judgment) it is stated that the original documents were produced at the time of exhibition of the

certified copies thereof.

Ex. DW-2/C was found to be a voter identify card dated 01.01.1995, issued by the Election Commission, much prior to filing of the suit instituted on 10.10.2001, in which again respondent No. 1 was shown to be wife of Harbans Singh.

As regards the contention of the plaintiffs that the defendants had concocted the whole story, in connivance with one Jit Singh son of Charan Singh, it was held that it was simply a bald assertion made by the plaintiffs, with that fact not even stated in their affidavit and that Simarjit Kaur @ Simbal Kaur was also not cross-examined on this allegation.

15. Further holding that the plaintiffs were obviously not even aware of the whereabouts of Harbans Singh, whereas on the other hand, respondents No. 1 to 4 by documentary evidence had proved themselves to be his legal heirs, the suit of the plaintiffs-appellants was dismissed, after discussion of case law cited on their behalf.

16. The learned lower Appellate Court, in the first appeal filed by the present appellant (Plaintiff No.1), also discussed the evidence in detail and eventually on the same reasoning as given by the learned Civil Judge, dismissed the appeal.

17. Before this Court, Ms.Naiya Gill, learned counsel for the appellant, and Mr. Puneet Jindal, learned Senior Advocate for the respondents-caveator, essentially reiterated, respectively, the arguments made before the learned Courts below and, in the case of Mr.Jindal, the reasoning for dismissal of the suit and the appeal,

which he contended was wholly sound and could not be faulted.

On specific query to learned counsel for the appellant, as to whether there was any error in the recording of the learned Civil Judge, that the original documents stated to have been issued in U.P. were produced in Court (certified copies of which were led in evidence), she could not deny the same. She also admitted that no evidence to the contrary was led, to try and prove that the said documents were not genuine or were otherwise in-admissible in evidence.

18. Having heard learned counsel for the parties and having considered the judgments of the learned Courts below, I find no error in the reasoning of the learned Courts below, especially in the face of the fact that not even an attempt was made by the plaintiffs to show that the documentary evidence relied upon by the respondent-defendants was not genuine or was otherwise inadmissible in evidence.

Though, because of the fact that respondent No. 1, Simarjit Kaur, stated that she was also known as Simbal Kaur and that her daughter, Rashpal Kaur (respondent No. 3), was also known as Parminder Kaur, with no proof in the form of school certificates etc., led in that behalf, it did create a suspicion in the mind of this Court; which was furthered by the fact that respondent No. 1 claimed that she was married at the age of 12-13 years, however, nothing to rebut those assertions has been brought to the notice of this Court.

Nothing has been shown, either by pointing to any

part of the documentary evidence led before the Courts below, or to any part of the testimony of any witness, to show that these assertions of respondent No. 1 (DW-2), were subjected to cross-examination in that regard.

Nor was it shown that any effort even, was made by the appellants to try and show that the documents led in evidence by respondents No. 1 to 4, to prove that they were the widow and children of the late Harbans Singh, were false or fabricated documents, or that these documents were inadmissible in evidence.

Thus, with such documentary evidence also having gone unrebutted, except to the extent of oral assertions doubting its genuineness, I find no ground to interfere with the judgments and decrees issued by the Courts below.

19. Consequently, finding no merit in the appeal, the same is dismissed in *limine*, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

February 29, 2016
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