

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

**RSA No.4215 of 2013 (O&M)
Date of decision: 15.03.2016**

Pritpal Singh and others.

... Appellants

Versus

Beant Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Vijay Rana, Advocate
for the appellants.

AMOL RATTAN SINGH, J.

This second appeal has been filed by the plaintiffs before the learned Civil Judge (Junior Division), Jalandhar, after their suit for declaration to the effect that they and defendants No.18 and 19 are owners in possession of the suit land measuring 20 kanal 16 marlas, in village Beaspind-I, Tehsil and District Jalandhar, was dismissed and the first appeal thereafter filed, was also dismissed.

In the suit, they had also sought a consequent decree of permanent injunction restraining the other respondents from interfering in their peaceful possession of the suit property, or from alienating it in any manner whatsoever.

Alternatively, they sought joint possession of the suit property, alongwith the defendants as owners thereof.

Defendant No.18 was subsequently transposed as plaintiff No.4

in the suit before the learned Civil Judge, vide an order dated 04.10.2010. (The suit itself was instituted on 13.03.2003).

2. The facts given in the plaint, as taken from the judgment of the learned Civil Judge, are that Jaswant Singh (father of appellants No.1 and 2 and husband of appellant No.3) and Gurbachan Singh, sons of Sheru were stated to be owners in possession of the suit land. Gurbachan Singh (deceased, prior to the filing of the suit), is stated to have sold his share in the suit land, during his life time, to one Bhagat Singh son of Hazara Singh, for a sum of Rs.5000/-, vide a registered sale deed, dated 19.12.1967.

Thereafter, Jaswant Singh who had also thereafter died, left the plaintiffs as his legal heirs but had earlier filed a preemption suit against Bhagat Singh, i.e. the vendee and his own brother, Gurbachan Singh.

The said suit is stated to have been decreed on 19.11.1970, subject to the plaintiff therein (Jaswant Singh) depositing a sum of Rs.4650/-. The said amount is stated to have been deposited in the District Treasury on 12.04.1971 and was received by the vendee (Bhagat Singh) on 01.07.1971.

3. Thereafter, the plaintiffs claim that they were in possession of the suit land as owners and nobody disturbed their possession. However, after the death of Gurbachan Singh, his widow got a mutation of inheritance, allegedly sanctioned illegally and without any basis, which the appellants-plaintiffs claimed to be not binding on them as Gurbachan Singh was not the owner of the suit land, he already having sold it to Bhagat Singh, after which the suit was decreed in favour of Jaswant Singh. It was also contended that in fact, a compromise was effected between the parties on 30.11.2002, but

thereafter again, the legal heirs of Gurbachan Singh having allegedly threatened to dispossess the plaintiffs, the suit was filed.

4. Upon notice issued by the learned Civil Judge, Gurbachan Singhs' two children and widow, i.e. Paramjit Singh, Davinder Kaur and Beant Kaur, respectively (defendants No.1 to 3 before the Civil Judge), filed a joint written statement, raising preliminary objections with regard to non-joinder, limitation and concealment, etc.

On merits, they contended that all co-sharers are joint owners in possession of the suit land, which had never been partitioned between the parties.

It was admitted that mutations had been sanctioned in their names in respect of the property left behind by Gurbachan Singh, despite objections raised thereto by the plaintiffs. It was denied that any compromise was effected between the parties.

5. Defendant No.19 (Sukhwinder Singh-presently respondent No.28), filed a separate written statement, admitting the fact that Jaswant Singh and Gurbachan Singh were owners of the suit land and that the appellants-plaintiffs and defendants No.18 and 19 are the legal representatives of Jaswant Singh. The factum of the suit filed by Jaswant Singh having been decreed and the amount of Rs.4650/- having been deposited and withdrawn on 01.7.1971, was also admitted. The mutation of inheritance in favour of the legal representatives of Gurbachan Singh was again admitted to have been legally sanctioned.

In other words, defendant No.19 supported the suit of the plaintiffs.

All other defendants were proceeded against *ex parte*, none of them having appeared to contest the suit.

6. Upon replication having been filed to the written statement of defendants No.1 to 3, the following issues were framed by the learned Civil Judge:-

- “1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed? OPP
3. Whether the plaintiff is entitled to alternate relief joint possession as owner? OPP
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the suit is barred by limitation? OPD
6. Whether no cause of action has accrued to the plaintiff to file the present suit? OPD
7. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
8. Relief.”

7. The plaintiffs examined 7 witnesses whereas the defendants examined only defendant No.2 (presently respondent No.8), as DW1. PWs1 to 3 all testified as per the contents of the plaint, after which one Bhagwant Singh from the office of District Treasury, appeared as PW4 and deposed in respect of Rs.4650/- deposited by Jaswant Singh on 12.04.1971 (pursuant to the decree in the suit for preemption). Suresh Kumar, Clerk in the office of D.C., Jalandhar, was examined as PW5, who proved the sale deed dated 19.12.1967 executed by Gurbachan Singh in favour of Bhagat Singh and thereafter, one Surinder Joshi from the “office of the record-room” was

examined as PW6, who deposed with regard to a report made by one H.S.Cheema, 'Parna Mohrar', Jalandhar, with regard to the record of the judgment and decree in the civil suit titled as Jaswant Singh v. Bhagat Singh having been burnt. Thus, this witness proved the report in that regard by the aforesaid H.S.Cheema. However, this witness did not subject himself to cross-examination and hence, his testimony was discarded.

Similarly, the testimony of one Pawan Kumar, Clerk of the revenue record room, Jalandhar, was also discarded for the same reason. This witness had testified with regard to the photocopy of a statement made by one Shri Hans Raj, Advocate, in the preemption suit and some other documents.

8. Defendant Davinder Kaur also deposed in terms of the written statement filed by the defendants, further proving orders dated 05.09.2007 (Ex.D1) passed by lower revenue authorities and an order of the Commissioner dated 22.01.2008.

This witness further deposed that the decree dated 19.11.1970 actually did not exist (earlier referred to as the decree dated 19.04.1970 by the plaintiffs), and therefore, there was no question of it being executed.

She further deposed that the revenue court had already passed the final partition order qua the suit property on 13.05.2010, against which the plaintiffs had preferred an appeal which was dismissed by the Court of the Collector, Jalandhar, as also the Commissioner.

9. Upon appraising the evidence and considering the arguments before him, the learned Civil Judge held that it was incumbent upon the plaintiffs to have proved the decree in favour of their father, Jaswant Singh,

against Gurbachan Singh and Bhagat Singh, in the suit stated to have been filed for preemption, which they were not able to do.

Though the plaintiffs had made efforts to examine the Clerk of the Judicial Record-Room as also from the Tehsil Office at Jalandhar, to prove the existence of the judgment and decree, however, since said witnesses did not subject themselves to cross-examination, obviously those testimonies had to be discarded. Therefore, despite the testimony of PW4 with regard to Rs.4650/- having been deposited as decree money, it was held that the decree dated 19.11.1970, in favour of Jaswant Singh, was not proved, further because despite opportunity, the plaintiffs did not apply for reconstruction of the record in that decree and thereafter have it summoned.

10. On the other hand, it was found by the learned Civil Judge that from the cross-examination of PW1, Kulwant Kaur, it could be seen that no execution proceedings had ever been filed in respect of the aforesaid decree of 1970. This witness had also admitted that no mutation had been sanctioned by the revenue authorities, on the basis of the judgment and decree in question, nor was any mutation sanctioned in favour of Bhagat Singh on the basis of the sale deed dated 19.12.1967. In fact, PW1 had also admitted that the mutation order in favour of defendants No.1 to 3, regarding Gurbachan Singhs' estate, was contested by the plaintiffs upto the final level of the Financial Commissioner but the said mutation was upheld in favour of the defendants.

The same was also admitted by PW3, Rajinder Kaur.

11. Hence, with the decree in the preemption suit not having been proved to have been passed in favour of the plaintiffs, and the mutation of

inheritance having been settled, after contest, upto the Financial Commissioner, and partition proceedings also having been finalized, the learned Civil Judge held that simply on the basis of the amount of Rs.4650/- deposited in the District Treasury, even on the basis of an order signed by Sub-Judge Ist Class, Jalandhar, for making such deposit, the plaintiffs would have no right and title in the suit land, with defendants No.1 to 3, being class-1 heirs of the late Gurbachan Singh.

It was also held that the suit was bad for non-joinder of parties, inasmuch as the legal heirs of Bhagat Singh, in whose favour the sale deed dated 19.12.1967 had been executed by Gurbachan Singh, were not impleaded as necessary parties.

Consequently, the suit was dismissed.

12. In the first appeal filed by the appellants, the learned District Judge, Jalandhar, also upheld the judgment and decree of the learned Civil Judge on the same grounds and dismissed the appeal.

13. It is to be noticed here that in the penultimate para (paragraph 9) of the judgment of the learned District Judge, it has been stated that the plaintiffs have challenged the preemption decree dated 19.11.1970 and that the Court cannot grant any relief if the suit is barred by limitation, even if no objection in that regard is raised. The judgment of the Supreme Court in **Bogidhola Tea & Trading Co. Ltd. and another versus Hira Lal Somani**, (2008(3) CCC 548), was cited by the lower Appellate Court, in this regard.

Obviously, the challenge to the preemption decree is a typographical/clerical error, inasmuch as, the first Appellate Court, throughout its judgment, otherwise has noticed and observed that the suit of

the plaintiffs was based essentially on the foundation that the decree of 1970 was in their favour. Consequently, there was no occasion for them to have challenged it.

14. However, on merits also, I find no error in the judgments of the Courts below.

Learned counsel for the appellants, though has argued in terms of what was argued for the plaintiffs (present appellants) before the Courts below, could not refute the fact that the decree dated 19.11.1970, which they claimed to be in favour of their father Jaswant Singh (husband of appellant No.3), was never proved before the Courts below.

It may be noticed here that though initially this Court was impressed with the argument that the deposit of Rs.4650/- had been proved, with PW4, Bhagwant Singh, from the office of the District Treasury, deposing that the receipt dated 12.04.1971 (Ex.PW4/1) was issued after the deposit was made on orders of the Sub Judge Ist Class, Jalandhar, however, a perusal of Ex.PW4/1 shows that actually it is an entry in the register of receipts, which simply shows that the same was deposited by Jaswant Singh on 12.04.1971, pursuant to an order of the Court of the learned Sub-Judge. The nature of the suit, or the order of the learned Sub-Judge, has not been proved anywhere on record. Hence, though otherwise this Court may have been inclined to interfere in the matter, as the possibility of the said deposit having been made pursuant to the decree that was relied upon by the appellants-plaintiffs naturally cannot be ruled out, however, in my opinion, such interference would be fruitless, with (admittedly), not even a certified copy of the decree dated 19.11.1970 having ever been produced before the

Courts below.

Hence, with the entire case of the appellants-plaintiffs resting on a decree claimed to be in favour of their father, which they could not prove, I find no ground to interfere with the judgments of the learned Courts below.

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

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In view of the fact that the appeal has actually been dismissed on merits, without notice having being issued, the question of condoning the delay of 141 days in re-filing the appeal is rendered to be only academic.

15.03.2016

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(AMOL RATTAN SINGH)
JUDGE