

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

(1)

RSA No. 4594 of 2013(O&M)

Decided on: 29.01.2016.

Babu Lal

... Appellant

Versus

Vijay Singh and others

... Respondents

(2)

RSA No. 1840 of 2014 (O&M)

Ram Singh and another

... Appellants

Versus

Vijay Singh and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.D. Yadav, Advocate,
for the appellant in RSA No. 4594 of 2013.

Mr. S.K. Yadav, Advocate,
for the appellants in RSA No. 1840 of 2014.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two Regular Second Appeals bearing No. 4594 of 2013, filed by Babu Lal, the defendant no. 9 and Regular Second Appeal No. 1840 of 2014, filed by the defendant nos. 3 and 4 against the common judgment and decree dated 31.08.2013, passed by the District Judge, Narnaul vide which two separate appeals filed by the defendants-appellants were dismissed and the judgment and decree dated 17.02.2011, passed by the

Additional Civil Judge (Senior Division) Narnaul were upheld.

In brief, the predecessor-in-interest of respondent No. 1 to 8 i.e. Gopi Ram filed a suit for partition of his share in the suit land. It was averred in the plaint that Gopi Ram, the plaintiff and the defendants were co-owners in possession of suit land measuring 2 Kanals 10 Marlas. The plaintiff was co-sharer to the extent of 1/3th share and the land had not been partitioned by metes and bounds. The defendants were requested to get the land partitioned which was refused by them. Hence, the suit.

On notice, the defendants appeared. The defendants No. 3 and 4 in their joint written-statement pleaded that Lakha Ram, son of Ram Rakh, was owner of the suit land who had given Khasra No. 251 measuring 5 Marlas to his uncle Heera in exchange for about 80 years back and in lieu of the same, he took 1/3th share of the land shown in the site plan from Ram Rakh, Dharma and Heera. After the death of Lakha Ram, the plaintiff and defendants no. 1 and 2 have got no concern with the land bearing Khasra no. 251 measuring 5 Marlas. Defendant No. 3 and 4 have entered into an agreement to sell that land to defendant no. 9 for a sum of Rs. 1 lac on 04.07.2005. The defendant No. 9 came in possession of the said land being prospective vendee and he had also constructed his house on the same. The defendants further pleaded that plaintiff, defendants No. 1 and 2 or their predecessor in interest never raised objection regarding ownership and possession of the land on Khasra no. 251 and they have got no concern with the same.

The remaining averments made in the plaint were denied.

The defendants No. 5 and 6 also stated about the exchange of land in question by Lakha Ram in favour of Heera and that after the death of Heera, Umda and Nihala became co-sharers in possession of the land. The defendant No. 9 has got no concern with the land in question.

The defendant no. 9 in his separate written statement denied the ownership and possession of plaintiff and defendant No. 1 and 2. He has stated that defendant Nos. 3 and 4 were in possession of this land since the time of his predecessor. The exchange of land by Lakha Ram and on the execution of agreement of sale dated 04.07.2005, he has been recorded as owner in possession of the land as prospective vendee and he has also constructed his house therein. He further took the plea that he was a bona-fide purchaser for valuable consideration and that his possession was in the knowledge of the plaintiff and defendant nos. 1 and 2, who have got no concern with the land in question.

The defendant Nos. 1, 2, 7 and 8 failed to appear before the trial Court. Consequently, they were proceeded ex-parte.

The replication was filed by the plaintiff wherein he reiterated the stand taken in the plaint and controverted the averments of defendants no. 3, 4, 5 and 6 and defendant No. 9.

From the pleadings of the parties, following issues

were framed :-

1. Whether suit property is the joint property of the parties? OPP
2. Whether suit is not maintainable regarding Khasra No. 251 as alleged? OPD
3. Whether the plaintiff is estopped to file the suit by his own act and conduct? OPD
4. Relief.

Under issue no. 1, the trial Court held that the suit property was the joint property of the parties, wherein the plaintiff and defendants No. 1 and 2 were having 1/3th share each and it was not proved that Khasra No. 251 was exchanged by Lakha Ram with his Uncle Heera. The agreement to sell dated 04.07.2005 was also held to be not proved. Consequently, the issues No. 1 and 2 were decided in favour of the plaintiff and against the defendants. The issue no. 3 was decided in favour of the plaintiff. In view of the findings returned on issues No. 1 to 3, preliminary decree for partition of the suit land was passed in favour of the plaintiff and against the defendants.

Feeling dissatisfied with the judgment and decree dated 17.02.2011, the defendants No. 3 and 4 and defendant No. 9 filed two separate appeals before the District Judge, Narnaul. Both the appeals were dismissed vide common judgment dated 31.08.2013 passed by the District Judge, Narnaul.

Still feeling aggrieved, the defendant No. 9 has

preferred RSA No. 4594 of 2013 whereas, the defendants No. 3 and 4

have filed RSA No. 1840 of 2014 assailing both the judgments and decrees.

Learned counsel for the appellants contends that both the Courts below have committed an error in decreeing the suit of the plaintiff. In fact, the plaintiff has no concern with the suit land as the land had already been exchanged by Lakha Ram i.e. the predecessor in-interest of the plaintiff, Gopi Ram with his uncle Heera. The defendants no. 3 and 4 are successors in interest of Heera.

On behalf of the defendant No. 9-appellant, It is contended that the suit land had already been purchased by defendant no. 9 for a sum of Rs. 1 lac vide agreement to sell dated 04.07.2005 from defendants no. 3 and 4. The defendant No.9 was a bona-fide purchaser. So, the interest of defendant No.9 is required to be protected.

The controversy raised in the present appeals revolves around the issues whether the suit land bearing Khasra No. 251 is the joint holding of the parties and whether the land was ever exchanged by Lakha Ram with his uncle Heera. It has been held by both the Courts below that the execution of exchange deed by Lakha Ram in favour of his Uncle Heera has not been proved on record. The defendants have led no evidence to prove the execution of the exchange deed. On the other hand, the plaintiff has led documentary evidence in the shape of jamabandi for the year 1998-99 Ex. P2, jamabandi for the year 1992-93 Ex. P3, jamabandi for the year 2011-12 Ex. P3,

consolidation of Khatauni for the year 1965-66 Ex. P4, Chah avval Ex. P5 and P6, naksha Haqdarwar Ex.P7 and consolidation Ex. P8 which go a long way to establish that the plaintiff along with defendants No. 1 and 2 is recorded as joint owner to the extent of 1/3th share each. The entry of possession is also reflected in their names. In the jamabandi Ex. P21, Lakha Ram i.e the father of the plaintiff and defendants no. 1 and 2 are recorded as exclusive owners in possession of the Khasra no. 251 measuring 5 marla.

With the aforesaid overwhelming evidence on record, both the Courts below have rightly held the plaintiff and defendants no. 1 and 2 to be the owners in possession of the suit land. The findings are recorded on correct appreciation of evidence. The defendants did not lead any evidence to prove the execution of exchange deed in favour of their predecessor-in-interest i.e. Heera.

As regards the contention raised by the learned counsel for defendant No. 9-appellant, it has not been proved on record that in pursuance to the agreement to sell dated 04.07.2005, any sale deed was ever executed in favour of the defendant no. 9. The mere execution of agreement to sell does not pass any right, title or interest in favour of defendant no. 9 unless there is any registered document conveying the title. It does not clothe the defendant No.9 with any right. Otherwise also, once the exchange deed has not been proved on record, the title of land in question did not vest with the defendants

No.3 & 4 from whom the defendant No.9 is purported to have

purchased the land. No one can pass a better title than he himself possesses.

This court feels that there is no misreading or misinterpretation of the evidence. The questions raised by the learned counsel for the appellants are not the questions of law but only relate to question of fact. Consequently, both the appeals are dismissed.

29.1.2016
SN

(JITENDRA CHAUHAN)
JUDGE