

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

R.S.A No. 2504 of 2015 (O&M)

Date of decision : 05.04.2016

Bhajan Singh

..... Appellant

Versus

Amar Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Harkaran Singh, Advocate
for Mr.B.S.Bhalla, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant no.2 against the judgment and decree dated 03.12.2014 passed by the learned Additional District Judge, Moga, vide which the appeal filed by him against the judgment and decree dated 22.11.2013, passed by the learned Additional Civil Judge (Sr. Division), Moga, has been dismissed.

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

3. As per averments of the plaint, defendant-respondent no.2 Gurnam Singh sold 8/15 shares i.e. 08 Kanals to the plaintiff for a valuable consideration vide registered sale deed dated 23.06.1993, out of the land measuring 51 Kanals detailed and described in the head note of

the plaint situated in the revenue estate of village Kishanpura Kalan Tehsil and District Moga. The plaintiff was also put in possession of the purchased land. Defendant no.2 has also purchased part of land from other co-sharers. But, he did not purchase any land from defendant no.1. So, he has no concern with the land in dispute purchased by the plaintiff from defendant no.1. The plaintiff-respondent no.1 has sought the decree for declaration that he is owner in joint possession of land measuring 8 Kanals as per the sale deed dated 23.06.1993. Hence, the suit.

4. The suit has been contested by defendant no.1/respondent no.2 and appellant-defendant no.2 by filing the separate written statements. Defendant no.1 admitted that he has sold the land measuring 8 Kanals out of total 51 Kanals to the plaintiff and he was put in possession of the same. However, it was pleaded that all the co-sharers are necessary parties and the plaintiff had no rightful claim against the answering defendant.

5. Appellant-defendant no.2 contested the suit on the plea that he has purchased the land vide three registered sale deeds i.e. 24 Kanals land from Nahar Singh son of Bachan Singh vide registered sale deed no/. 531 dated 15.06.1989, 8 Kanals 17 Marlas land from Jasmail Kaur wife of Nirma Singh vide sale deed no.665 dated 09.07.1998 and 4 Kanals land from Gurdial Kaur wife of Bachan Kaur vide sale deed bearing no. 64 dated 21.04.1993 and he is in exclusive possession of the aforesaid land. With these pleas, defendants pleaded for dismissal of the suit.

6. Plaintiff filed the replication to controvert the pleas raised in the written statement. From the pleadings of the parties, the following

issues were framed by the learned trial Court vide order dated 14.02.2012:-

1. Whether plaintiff is owner in joint possession of the suit land?
OPP
2. Whether suit is bad for non-joinder and mis-joinder of necessary parties?OPD
3. Whether plaintiff has concealed the material facts from the Court?OPD
4. Whether suit is properly valued?OPP
5. Whether plaintiff is entitled to declaration, as prayed for?OPP
6. Whether plaintiff is in joint possession as owner of suit land?
OPP
7. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent no.1 for declaration to the effect that he is duly entitled to be declared as owner in joint possession of the suit land to the extent of 8/15 share in the suit land.

8. Appellant-defendant no.2 preferred the appeal against the impugned judgment and decree dated 22.11.2013 passed by the trial Court and the same was dismissed by the learned Additional District Judge, Moga, vide impugned judgment and decree dated 03.12.2014. Hence this Regular Second Appeal.

9. I have heard Mr.Harkaran Singh, Advocate for Mr. B.S.Bhalla, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the appellant has purchased the land in this khewat vide

three sale deeds and he is in exclusive possession thereof. The sale deed in favour of the plaintiff is not binding on the rights of the appellant. Thus, he contended that the findings recorded by the learned Courts below are not sustainable.

11. I have duly considered the aforesaid contentions.

12. Plaintiff-respondent no.1 has filed the suit for grant of decree for declaration to the effect that he is owner in joint possession to the extent of 8/51 shares i.e. 8 Kanals as per the sale deed dated 23.06.1993 out of the total land measuring 51 Kanals as detailed and described in the head note of the plaint situated in the revenue estate of village Kishanpura Kalan, Tehsil and District Moga. In the alternative, he has sought the joint possession of the land in dispute.

13. Defendant no.1 has admitted the sale of the land measuring 8 Kanals to the plaintiff by him. Even otherwise, the execution of the sale deed dated 23.06.1993 by defendant no.1 in favour of the plaintiff is proved from the statement of PW-1 Varinder Kumar Bhinder, the petition writer and PW-2 Bikkar Singh, Nambardar, the marginal witness of the sale deed. Plaintiff himself has also stepped into the witness box as PW-3. The case of the plaintiff is also corroborated from the revenue record. Ex.P-2 is the copy of the jamabandi for the year 2004-2005, which shows that plaintiff-Amar Singh is owner to the extent of 73 shares in the total land measuring 23 Kanals 13 Marlas comprised in Khewat No. 383, 75 shares in total land measuring 23 Kanals 19 Marlas comprised in Khewat no. 387 and to the extent of 11 shares in the land comprised in Khewat No. 388. In this way, he is recorded to be the owner of the land measuring

8 Kanals, which he has purchased from defendant no.1 by way of sale deed dated 23.06.1993.

14. Appellant-defendant no.2 had put-forward the plea of the purchase of land measuring 36 Kanals 17 Marlas vide three separate sale deeds dated 15.06.1989, 09.07.1998 and 21.04.1993. The purchase of the aforesaid land by defendants will not extinguished the title of the plaintiff qua the land measuring 8 Kanals i.e. 8/51 shares out of the suit land which he has purchased from defendant no.1 vide registered sale deed dated 23.06.1993. The claim of the plaintiff is also corroborated from the copy of jamabandi for the year 2004-05 Ex.P-2. So, the plaintiff-respondent no.1 is proved to be the owner in joint possession of the suit land to the extent of 8/51 shares i.e. 8 Kanals of the suit land.

15. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below, which do not call for any interference by this Court.

16. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

April 05, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**