

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

**R.S.A No.5730 of 2015(O&M)
Date of decision :07.11.2016**

Harpal Singh

..... Appellant

Versus

Gurpal Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Deepak Nayar, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 23.07.2015 passed by the learned District Judge, Amritsar, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 13.08.2013 passed by the learned Civil Judge (Jr. Division), Amritsar, has been dismissed.

2. Appellant-plaintiff-Harpal Singh filed the suit for declaration that mutation no. 1184 regarding transfer of ownership of the land measuring 21 Kanals 18 Marlas detailed and described in the head note of the plaint situated in the revenue estate of Village Dhaul Kalan, Tehsil and District Amritsar by defendant no.2 in favour of defendant no.1 is illegal, null and void and liable to be set aside. In the consequential relief,

he has prayed the decree for permanent injunction.

3. As per averments in the plaint, originally Bhagat Singh, the grandfather of plaintiff and defendant no.1 was co-owner in respect of the land measuring 328 Kanals 15 Marlas. He has inherited the said property from his father-Nihal Singh and after his death, his estate was inherited by his son-Surjan Singh, the father of the plaintiff and defendant no.1 and husband of defendant no.2. After the death of Surjan Singh, his property was inherited by plaintiff and his other legal heirs. The legal heirs of Surjan Singh are in joint possession of the suit property. Defendant no.2 has inherited the property from Surjan Singh, the father of plaintiff and defendant no.1, as such she has no legal right to transfer the ownership of the property in favour of defendant no.1. She has wrongly executed some documents transferring her ownership rights in favour of defendant no.1. Mutation no. 1184 has been wrongly sanctioned. The documents on the basis of which the said mutation was sanctioned was only a paper transaction. The said mutation is liable to be set aside. It is further pleaded that plaintiff and defendant no.1 are the real sons of defendant no.2 and have equal right under the Hindu Succession Act in respect of her estate. Hence, the suit.

4. The suit has been contested by the defendants-respondents on the grounds *inter alia* that Surjan Singh was the owner in possession of the land in question. He died 40 years back intestate. He left behind six legal heirs namely plaintiff-Harpal Singh, defendant no.1-Gurpal Singh his sons defendant no.2-Harbans Kaur his widow and three daughters namely Balwinder Kaur, Kulwinder Kaur and Kulwant Singh. They all

inherited the estate left by Surjan Singh and their names were incorporated in the revenue record. Defendant no.2 being the owner in possession and co-sharer in the joint land has rightly transferred her share in favour of defendant no.1 vide transfer deed dated 29.01.2007 and delivered the possession to him and mutation no. 1184 has also been sanctioned in his favour which is legal and valid. All these facts were in the knowledge of the plaintiff but, he has intentionally concealed the facts from the Court. With these pleas, defendants-respondents pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether the suit is not legally maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action in the present suit? OPD
5. Whether the Court has no jurisdiction to entertain and try the present suit?OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction?OPD
8. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties?OPD
9. Whether the suit is time barred?OPD
10. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 13.08.2013.

7. Aggrieved with the aforesaid judgment and decree, appellant-defendant preferred the appeal. The same has also been

dismissed by the learned Additional District Judge, Ambala vide impugned judgment and decree dated 23.07.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Deepak Nayar, Advocate, learned counsel for appellant and have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the suit property was the ancestral/co-parcenary property of the plaintiff-appellant and defendant no.1-Gurpal Singh. Defendant no.2-Harbans Kaur had inherited the suit property from her husband-Surjan Singh, the father of plaintiff. She has no right to transfer the suit land in favour of defendant no.1. He contended that appellant-plaintiff and defendant no.1 had equal right of succession of the property standing in the name of defendant no.2. He further contended that appellant-plaintiff has a right by birth in the suit property, which is ancestral/coparcenary property. So, defendant had no right to deprive of the appellant-plaintiff and to transfer the same in favour of defendant no.1. Thus, he contended that the transfer deed dated 29.01.2007 and consequent mutation no. 1184 are illegal and not binding on the rights of the plaintiff. Thus, he contended that the learned Courts below have wrongly dismissed the suit.

10. I have duly considered the aforesaid contentions.

11. Both the learned Courts below have consistently held that the appellant-plaintiff has not been able to establish that the suit property was ancestral property. Appellant-plaintiff has alleged that originally Bhagat Singh, the grandfather of plaintiff and defendant no.1 was co-sharer in

the suit land, who had inherited the same from his father-Nihal Singh. After the death of Bhagat Singh, his estate was inherited by Surjan Singh, the father of plaintiff and defendant no.1 and after his death, the suit land was inherited by the parties along with other legal heirs of deceased-Surjan Singh. It is settled principle of law that in order to establish the nature of the property i.e. the ancestral or self acquired one has to bent upon the documentary evidence/revenue record and the oral evidence is not of much consequences. In the instant case, appellant-plaintiff has placed on file the copy of jamabandi for the year 1950-51 Ex.P-1, copy of jamabandi for the year 1959-60 Ex.P-2, copy of jamabandi for the year 1987-88 Ex.P-3 and copy of jamabandi for the year 2005-06 Ex.P-4. In the copy of jamabandi Ex.P-1, some different khasra numbers are mentioned. Bhagat Singh is shown to be owner of different khasra numbers which are not connected with the suit land. Jamabandi Ex.P-2 for the year 1959-60 shows Surjan Singh to be the co-owner of the suit land. But, it does not establish the suit property to be ancestral in his hands as it is not established that Surjan Singh has inherited the said property from his father, father's father and father's father's father. Appellant-plaintiff has not placed on record the copy of excerpt and mutation to establish the line of succession/inheritance. So, no fault can be found with the findings recorded by the learned Courts below that appellant-plaintiff has not been able to establish the suit property to be the ancestral property of the parties.

12. Taking the case from another angle, it is an admitted fact that defendant no.2 has inherited the suit property from her husband and by

virtue of Section 14(1) of the Hindu Succession Act,. 1956, she has become the absolute owner of the suit property irrespective of the fact with respect to the nature of the property whether ancestral or self acquired.

13. Thus, defendant no.2 being the absolute owner of the suit property was fully competent to transfer the same in favour of defendant no.1. She has herself stepped into the witness box as DW-2 and deposed that she being the owner/co-sharer in possession of the land in dispute has rightly transferred the same in favour of defendant no.1-Gurpal Singh by transfer deed dated 29.01.2007 (Copy Ex.DW1/A) and mutation has also been sanctioned in his favour.

14. Further in the plaint, plaintiff has not challenged the validity and legality of the transfer deed dated 29.01.2007 which was the document of title. He has simply challenged the mutation no. 1184 without assailing the transfer deed on the basis of which the said mutation has been sanctioned. As discussed above, defendant no.2-Harbans Kaur was the absolute owner of the suit property and was fully competent to transfer the same in favour of defendant no.1-Gurpal Singh, her son. Thus, mutation no. 1184 has been rightly sanctioned in favour of defendant no.1 on the basis of a legal and valid transfer deed dated 29.01.2007. Consequently, plaintiff-appellant is not entitled for declaration and injunction as prayed for.

15. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

16. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 07, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No