

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3086 of 2014(O&M)
Date of Decision: 29.2.2016

Kabal Singh and others

---Appellants

vs.

Rashpal Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.S.Swaich, Advocate
for the appellants

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present regular second appeal has been directed against the consistent findings recorded by the courts below whereby suit filed by the appellants has been dismissed by the learned trial court vide judgment and decree dated 5.5.2012 and the findings recorded by the trial court have been concurred by the first appellate court by dismissing the appeal vide judgment and decree dated 11.12.2013.

In brief, the facts relevant for disposal of present appeal are

that the appellants claimed that Gurdeep Singh (predecessor-in-interest of the respondents) is left with no right in the suit property in view of family partition effected orally in the year 1960, subsequently reduced into writing on 1.7.1995 whereby Sh. Gurdeep Singh relinquished his share in favour of other co-owners, received compensation of the land and another amount of Rs. 30,000/-. Gurdeep Singh purchased land in village Manawan Tehsil Patti in the name of his sons.

The respondents-defendants have denied any oral partition between the co-owners, execution of yadashatnama dated 1.7.1995 with the averments that entries in the revenue record in the name of Gurdeep Singh are legal and valid.

The learned trial court dismissed the suit primarily on two counts i.e. the alleged memo of partition dated 1.7.1995 being not admissible in evidence and the suit is barred by limitation as has been filed beyond a period of three years with effect from 1.7.1995. The first appellate court affirmed the finding and also took note of the fact that some of the co-sharers whose names are mentioned in the jamabandi for the year 1993-94 (Ex.P3) namely Guro, Kashmir Singh, Mohinder Singh, Joginder Singh, Charno, Veero, Banto, Gago, Tej Kaur and Deepo are not a party at the time of execution of yadashatnama and in absence of said co-sharers, no partition can be effected.

Counsel for the appellant would urge that oral partition was effected amongst the co-sharers, detailed in memo of partition, in the year 1960 but the oral partition was reduced into writing in the year 1995, therefore, the same does not require registration. Further dilating, it is

argued that in the oral partition effected in the year 1960, Sh. Gurdeep Singh was given land measuring 21 kanals 19 marlas, mentioned at serial No. 1 in the document titled 'Yadashat Gharoghi wand' whereas the other co-owners were given land more than 47 kanals each, mentioned at Sr. No. 2 to 4, respectively. It is argued that Sh. Gurdeep Singh was given lesser area as he was paid compensation of the entire land measuring approximately 3½ acres that came to be acquired for the purpose of drain and the said fact has been duly incorporated in the memo of partition (Ex. P1). Sh. Gurdeep Singh was given an amount of Rs. 30,000/- in January 1978 and he purchased land in favour of his sons as per sale deed dated 2.2.1978 (Ex. P4) for a sale consideration of Rs. 28,935/-. The last submission made by counsel is that the mere fact that oral partition effected in the year 1960 and memo of partition exhibited in the year 1995 was not given effect to in the revenue records is neither sufficient to enure to benefit of the respondents nor to deprive the appellants of their right in the suit property qua the share of Sh. Gurdeep Singh. In addition, it is submitted that Gurdeep Singh was left with no right or interest in the suit land who has already relinquished his right being one of the co-owners by receipt of compensation in respect of land acquired for a drain and Rs. 30,000/- in January 1978.

I have heard counsel for the appellants and perused the records.

On due consideration of the materials on record and submissions made by counsel for the appellants, it becomes an admitted position of the case that the entire controversy revolves around document dated 1.7.1995(Ex. P1). As per the recitals on the first page of Ex. P1, land

measuring 164 kanals 3 marlas as per jamabandi for the year 1993-94 was stated to be partitioned amongst the parties as per the oral partition made in the year 1960. Party No. 1 namely Gurdeep Singh son of Ghulla Singh son of Anand Singh was given land measuring 21 kanals 19 marlas comprised in khasra Nos. 48//2(6-13), 9(8-0), 3/1(0-10), 8/2(1-14), 7/2/1/1(4-3), 6/2(0-1), 14/1/2/1(0-18). In the opening lines on the second page of Ex. P1, it has been mentioned, translated in English, in the following words:-

“Gurdeep Singh party No. 1 wants to have other land after leaving the land of his share. For this purpose, the three parties had given him Rs. 30,000/- in January 1978 so that he can get other land. Now Gurdeep Singh is left with no connection with this land. The three parties have become owners of land that had fallen to his share. The land of share of Gurdeep Singh is already in possession of the remaining three parties. We have got no objection if mutation of land of share of Gurdeep Singh is made in the name of remaining three parties.”

A conjoint reading of para No. 1 on the first page and the aforesaid extract, even if taken on its face value, would lead to an irresistible conclusion that as per Ex. P1, Sh. Gurdeep Singh was given 21 kanals 19 marlas land in the oral family partition allegedly effected in the year 1960 but later he relinquished his share qua that land on receipt of Rs. 30,000/- in January 1978. It is nowhere pleaded by the appellants that oral family partition effected in the year 1960 was modified in the year 1978 or to say in other words, that in the year 1978 the co-owners entered into

another family settlement whereby Gurdeep Singh relinquished his claim even qua land measuring 21 kanals 19 marlas which had earlier fallen to his share in the partition effected in the year 1960.

A plain reading of 'Yadashat Gharoghi wand' by no stretch of imagination can lead to an inference that Sh. Gurdeep Singh relinquished his share even in respect of land measuring 21 kanals 19 marlas on payment of Rs. 30,000/- at a future date, in the year 1960. Even otherwise, it does not appeal to reason that Gurdeep Singh agreed to relinquish his claim in the joint land in the year 1960 in lieu of payment of Rs. 30,000/- to be made on some future occasion and that too after a period of about two decades. In this view of the matter, I find myself unable to accept submissions of counsel for the appellants that Sh. Gurdeep Singh relinquished his entire share by way of oral family settlement effected in the year 1960. It further appears to the Court that as Sh. Gurdeep Singh purchased some land in February 1978, the factum of payment of Rs. 30,000/- in January 1978 has been incorporated in the document Ex. P1 to reconcile the payment of Rs. 30,000/- with sale consideration in the sale deed of 1978. Taken from another angle, if Gurdeep Singh expressed his wish to purchase other land and for that reason, the others paid him Rs. 30,000/- in January 1978, in absence of any further oral settlement between the parties in the year 1978, relinquishment of claim by Sh. Gurdeep Singh in regard to 21 kanals 19 marlas of land requires registration in view of provisions of the Indian Registration Act.

Keeping in view sum and substance of document Ex. P1, absence of any evidence that Gurdeep Singh received compensation in

respect of total land acquired for the purpose of a drain much less the acquisition having taken place prior to the year 1960 and compensation also having been paid before 1960, the courts below have rightly refused to rely upon memo of partition Ex. P1 either to accept claim of the appellants or to deprive successors in interest of Sh. Gurdeep Singh of a share in the suit property.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

29.2.2016
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