

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

**R.S.A No.5533 of 2014 (O&M)
Date of decision :08.09.2016**

Abdul

..... Appellant

Versus

Ayyub and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Jagdeep Bains, Advocate
for the appellant.

None for respondent no.1.

Mr. Gurwinder Singh, Advocate
for respondents no.2 and 3.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 08.05.2014 passed by the learned Additional District Judge, Mewat, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 21.01.2013 passed by the learned Addl. Civil Judge (Sr. Division), Nuh, has been dismissed.

2. Appellant-plaintiff has filed the suit for declaration with a consequential relief of permanent injunction on the averments that he is owner in possession of the agriculture land comprised of Khewat/Khatoni No. 56/65, Rect. No. 5, Killa No.6 (8-0), 15(2-16), Rect. No. 6, Killa No. 9/2 (6-16) total measuring 17 Kanals 12 Marlas situated within the

revenue estate of village Chundhika, Tehsil Tauru, District Mewat fully detailed and described in para no. 1 of the plaint. It is further pleaded that the suit land along with other land was joint between the plaintiff, defendant no.1 and their other brothers. The same was mutually partitioned about 30 years back. As a result of the said partition, the separate Khewat/ Khatoni numbers were allotted to the plaintiff, defendant no.1 and their brothers. The suit land had fallen to the share of the plaintiff. Since then, he is exclusive owner in possession of the aforesaid land. The said partition was duly mutated in the revenue record. It is further pleaded that defendant no.1 had no concern with the suit land in any manner. But, he had illegally and unlawfully sold 80/427 share out of the land bearing Khewat/Khatoni No. 56/65-67, Rect. No. 5, Killa No.6 (8-0), 15(2-16), Rect. no. 6, Killa No. 10(8-0), 11(2-11), total measuring 21 Kanals 7 Marlas to defendants no. 2 and 3 vide impugned sale deed dated 18.06.2009. In the said sale deed, defendant no. 1 had illegally and unlawfully made the wrong recitals regarding delivery of possession of the aforesaid land to defendants no.2 and 3. Whereas, he has no concern with the Killa Nos. 6 and 15 which had fallen to the share of plaintiff in the mutual partition which took place 30 years back. Hence the appellant-plaintiff filed the suit seeking declaration that the sale deed dated 18.06.2009 executed by defendant no.1 in favour of defendants no.2 and 3 is wrong, illegal, null and void, ineffective, inoperative and not binding on the rights of the plaintiff and is liable to be set aside. He also sought the consequential relief of permanent injunction.

3. The suit was contested by the defendants no.1 and

defendants no.2 and 3 by filing the separate written statements. Defendant no.1 contested the suit on the grounds inter alia that plaintiff and defendants are co-owners and co-sharers and are in joint possession of the suit land and the same was neither partitioned either mutually or by meets and bounds between all the co-sharers. The story projected by the plaintiff is false. He further pleaded that he has rightly and correctly sold his share to defendants no.2 and 3. He denied that Killa Nos. 6 and 15 had fallen to the share of plaintiff as alleged. With these pleas, he pleaded for the dismissal of the suit.

4. Defendants no. 2 and 3 also contested the suit on the similar lines.

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

1. Whether the plaintiff is owner in possession of the suit land by setting aside the sale deed bearing vasika no. 431 dated 18.06.2009?OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPP
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the suit of the appellant-plaintiff was partly decreed by the learned trial Court vide impugned judgment and decree dated 21.01.2013. The plaintiff was held to be joint owner in exclusive possession of the suit property. Consequently, defendants no. 2 and 3 were restrained from interfering in his peaceful and separate possession.

7. Aggrieved with the aforesaid judgment and decree dated 21.01.2013, appellant-plaintiff preferred the appeal. The same was dismissed by the learned Additional District Judge, Mewat vide impugned judgment and decree dated 08.05.2014. Hence this Regular Second Appeal.

8. I have heard Ms. Jagdeep Bains, Advocate, learned counsel for the appellant, Mr. Gurwinder Singh, Advocate, learned counsel for respondents no.2 and 3 and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that appellant has become exclusive owner in possession of the land comprised of Khewat/Khatoni No. 56/65, Rect. No. 5, Killa No.6 (8-0), 15 (2-16), Rect. no. 6, Killa No.9/2 (6-16), total measuring 17 Kanals 12 Marlas. She contended that defendant no. 1 had no connection with this land but, he has illegally and unlawfully sold the 80/ 427 shares out of the total land including Killa Nos. 6 and 15 which had already fallen to the share of plaintiff. She contended that as a result of the mutual partition between the parties, which took place 30 years back the separate Khatonis were allotted which is evident from the copy of the Jamabandies. Thus, she contended that the sale deed dated 18.06.2009 executed by defendant no.1 in favour of defendants no.2 and 3 is illegal as he was not competent to sell the suit land.

10. On the other hand, learned counsel for the respondents no.2 and 3 contended that plaintiff and defendant no.1 along with their other brothers were the joint owner of the land in dispute. The separate

Khatonies does not show the partition of the land. It only shows the separate cultivation. He contended that it is the settled principle of law that if the specific Killa numbers are described in the sale deed out of the joint holding, the sale deed cannot be held to be invalid at the most it can be considered to be the sale of the share subject to partition. He contended that defendant no.1 being the joint owner of the land in dispute was fully competent to alienate his share. So, the sale deed dated 18.06.2009 is legal and valid.

11. I have duly considered the aforesaid contentions.

12. Appellant-plaintiff Abdul and defendant-respondent no.1 are the real brothers. Appellant-plaintiff has alleged that the mutual partition has taken place between them 30 years back. As a result of which he has become exclusive owner in possession of the land comprised of Rect. No. 5, Killa No.6 (8-0), 15 (2-16), Rect. No. 6, Killa No. 9/2 (6-16) total measuring 17 Kanals 12 Marlas and defendant no.1 has no concern with this land. Appellant-plaintiff has also alleged that even the mutual partition was mutated in the revenue record. But, no such mutation of mutual partition has been brought on record. Appellant-plaintiff has only produced the copy of Jamabandies Ex.P-1 to P-7. These copies of Jamabandies right from the year 1980-81 to 2010-11 show that appellant-plaintiff Abdul along with his brothers Ayyub and Kamal Khan are recorded as joint owner over the suit property. However, in the column of cultivation, they have been shown to be in possession of separate parcels of the land. It is settled principle of law that the presumption of truth is attached to the Jamabandi entries. The aforesaid consistent entries in the

Jamabandies negates the plea of the plaintiff-appellant about the partition of the land in dispute. They are only shown to be in separate possession under some arrangement for the purpose of cultivation. Thus, defendant no.1 was the co-owner in the suit property.

13. It is not disputed that in the impugned sale deed the specific Killa numbers have been mentioned including Rect. No. 5, Killa No. 6 (8-0) and 15 (2-16) which are shown to be in possession of the appellant in the copy of Jamabandis. So, certainly, defendant no.1 was not in position to deliver the possession of these Killa numbers to defendants no.2 and 3 as he himself was not in possession of these Killa numbers i.e. Rect. No. 5, Killa No. 6 (8-0) and 15 (2-16). But, in view of the settled legal position, the sale deed dated 18.06.2009 cannot be held invalid or illegal merely on the ground that the specific Killa numbers have been mentioned in the sale deed. At the most, it shall be considered to be the sale of the share.

14. The Full Bench of this Court in case **Bhartu Vs. Ram Sarup 1981 PLJ 204**, has laid down that the sale of a specific portion of the land described by particular Khasra number by a co-sharer out of the joint Khewat shall be the sale of the share out of the joint land. The same proposition of law has been laid down by the Hon'ble Apex Court in cases **Mange Ram and others Vs. Ram Chander 2002(3) R.C.R (Civil) 303**, **Jai Singh and Ors. Vs. Gurmej Singh 2009(1) R.C.R (Civil) 874** and another Full Bench of this Court in case **Ram Chander Vs. Bhim Singh and others 2008(3) R.C.R. (Civil) 685**. Thus, the sale made by defendant no.1 in favour of defendants no.2 and 3 vide impugned sale

deed dated 18.06.2009 will be considered to be the sale of share only even though the specific Killa numbers have been mentioned therein.

15. It is also established from the evidence on record that defendant no.1 was not in possession of the land comprised of Rect. No.5, Killa No. 6 and 15, so he was not in position to hand over the possession of the aforesaid Killa numbers to defendants no.2 and 3. Rather, plaintiff-appellant is proved to be in exclusive possession thereof and the learned trial Court has rightly observed that the recital in the sale deed qua handing over the possession thereof shall be ineffective and of no consequence. But, at the same time appellant-plaintiff has not been able to establish the partition of the joint land, so he cannot claim himself to be the exclusive owner of the suit property and he has not been rightly held to be joint owner by the learned trial Court.

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

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

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

September 08, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No