

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

**RSA No.2407 of 2016 (O&M)
Date of decision: 16.05.2017**

Suresh Kumar and others

... Appellants

Vs.

Udham Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit of the plaintiffs for declaration and permanent injunction was decreed by the learned trial Court vide its impugned judgment and decree dated 09.12.2011 and first appeal of the defendants was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 27.04.2016.

Brief facts of the case, as recorded by learned trial Court in paras 2 to 5 of its judgment, are that the total land measuring 449 kanals 15 marlas situated within the revenue estate of village Peoda was owned by Hazoor Singh son of Mangal Singh. After his death, his property was inherited by Harbans Kaur and another widow, jointly one share, Rajwant Kaur, Smt. Sarno,

Sukhvinder Kaur, Mukhi, Tejo, Kanto daughters and Ajeet Singh and Amrik Singh sons of Hazoor Singh in equal shares. Widows got jointly by share. However, due to compromise and decision of the Hon'ble High Court and subsequent mutation No.1100 was sanctioned and 7/16th share was transferred in favour of Harbans Kaur widow of Hazoor Singh, Sarno and Sukhvinder Kaur daughter of Hazoor Singh and Ajit Singh and Amrik Singh, sons who were already owners of 1/8th share each. The land number was as per jamabandi for the year 2003-04, detail mentioned in para No.4 of the plaint.

It had been averred that Sukhvindro @ Sinder Kaur daughter of Hazoor Singh sold her 1/5th share equal to 59 kanals 15 marlas in favour of plaintiffs vide sale deed bearing Vasika No.2551/1 dated 07.03.1975 and 1/5th share of Kotha pukhta of tubewell along with all rights for Rs.48,600/- to Mehal Singh son of Sant Singh 3/4th share and Khazan Singh son of Landha Singh defendant 1/4th share and actual possession was delivered. Sarno also sold her 2/15th share vide sale deed dated 31.12.1976 to the extent of 39 kanals 17 marlas in favour of Satnam Singh, Jagtar Singh, Udham Singh and Jarnail Singh and 1/4th share to Sucha Singh, Gurnam Singh, Gulzar Singh sons of Khazan Singh son of Landha Singh, Smt. Sarno also sold 19 kanals 18 marlas to Mehal Singh son of Sant Singh father of the plaintiffs vide sale deed dated 07.03.1975 and mutation No.1161 was sanctioned accordingly in favour of Mehal Singh etc.

It had been averred that Harbans Kaur widow of Hazoor Singh sold 59 kanals 15 marlas i.e. 1/5th share of 298 kanals 15 marlas in favour of plaintiff vide sale deed dated 07.03.1975. Similarly Sikandar Lal and Ishwar Kumar sons of Hans Raj residents of Village Teontha sold 45 kanals of land of

village Teontha to Satnam, Jagtar Singh, Udham Singh and Jarnail Singh sons of Mangal Singh son of Sant Singh 3/4th share, Sucha Singh, Gurnam Singh, Gurjant Singh sons of Khazan Singh son of Landha Singh 1/4th share vide registered sale deed dated 22.10.1976 and they had exchanged the same with the land of Ajit and Amrit with the land 83 kanals 10 marlas vide Civil Court decree dated 18.04.1978 in Civil Suit No.408 of 1978. Thus, plaintiff No.4 also became owner in possession of 3/4th share of 83 kanals 10 marlas of land. Thus, the plaintiffs became owners of the total land measuring 197 kanals 2 marlas. The plaintiffs were inter-se owners in possession of 1/7th share each in the total land.

It had been averred that the revenue record does not show that Mehal Singh, father of plaintiff No.1 to 4 purchased the said land. This fault in the revenue record crept in as the mutation of the property were not entered therein. The family of the plaintiffs had not exchanged the possession of 197 kanals 02 marlas, as mentioned in para No.14 of the plaint. They had been shown in possession of less area of the record. They requested the defendants number of times to get the revenue record corrected but they refused.

Having been served in the suit, defendants No.2 and 3 appeared and contested the suit by filing their joint written statement, raising more than one preliminary objections. Defendants No.5 to 9, 11, 13 to 15, 29 to 32 and 40 also filed their contesting and joint written statement. Plaintiffs filed their replications. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to a decree for declaration and permanent injunction as prayed for?OPP

2. Whether the present suit is not maintainable in the present form ?OPD
3. Whether the plaintiffs have no cause of action to file the present suit against the defendants ?OPD
4. Whether the plaintiffs are estopped from filing the present suit ?OPD
5. Whether the suit is bad by the principle of limitation ? OPD
6. Whether the entries in the revenue record are correct, according to the ownership and possession of the parties and nothing is wrong therein ?OPD
7. Whether the suit is false frivolous and bogus and is liable to be dismissed with costs ?OPD
8. Relief.

In order to substantiate their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiffs have duly proved their case. They were found entitled to be declared as owners in possession of the suit land measuring 197 kanals 02 marlas, as per numerous sale deeds and mutations entered in their favour. Accordingly, suit of the plaintiffs for declaration and permanent injunction was decreed by the learned trial Court, vide its impugned judgment and decree dated 09.12.2011. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed with some modification by the learned first appellate Court, vide its impugned judgment and decree dated 27.04.2016. Hence this regular second appeal at the

hands of the unsuccessful defendants.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that plaintiffs purchased the suit land by way of more than one sale deeds and as a consequence thereof, more than one mutations came to be entered and sanctioned in their favour. It is also not in dispute that none of the sale deeds and mutations in favour of the plaintiffs were ever challenged by anybody, including the defendants-appellants. A bare perusal of paras 13 to 16 of the impugned judgment of the learned trial Court will make it crystal clear that it was voluminous evidence brought on record by both the parties, including the revenue record. Learned trial Court recorded its cogent and convincing findings in paras 22 to 30 of its impugned judgment, while deciding issue No.1 in favour of the plaintiffs and against the defendants-appellants.

Once the ownership and possession of the plaintiffs-respondents on the basis of their more than one sale deeds and mutations was not in dispute, their suit was rightly decreed by the learned trial Court. Again, the learned first appellate Court upheld the findings recorded by the learned trial Court on due appreciation of true facts of the case as well as the evidence available on record. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It was also a matter of record that original owner was one late Sh. Hazoor Singh. He was owner in possession of a big chunk of land and was also karta of Hindu undivided family. Plaintiffs purchased the suit land from two daughters of late Sh. Hazoor Singh and his widow Smt. Harbans Kaur to the

extent of their equal share i.e. 59 kanals 15 marlas each. In addition to that, plaintiffs also purchased land measuring 45 kanals from Sikandar Lal and Ishwar Kumar sons of Hans Raj. All these sale deeds were of the year 1975 and 1976. Then there was a civil Court decree dated 18.04.1978 passed in Civil Suit No.408 of 1978.

Thus, on the basis of abovesaid four sale deeds and civil Court decree, plaintiffs became owners in possession to the extent of 197 kanals 02 marlas. As noticed hereinabove, all these sale deeds as well as mutations sanctioned on the basis thereof, were never challenged by anybody, including the defendants-appellants. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at the judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in para 18 of its impugned judgment, which deserve to be noticed here, read as under: -

“This is suit for declaration brought by respondents-plaintiffs claiming themselves to be owners in possession of land measuring 197 Kanals 02 Marlas. According to them initially, one Hazoor Singh was owner in possession of suit land being Karta of HUF. After his death, it was inherited by his five daughters, two sons and two widows. According to plaintiffs, two widows were given one

share whereas other heirs were given one share each. Widows were given 1/8th share jointly. They inherited land to the extent of 1/16 share each. But while sanctioning mutation, a mistake crept in. Later on some of his daughters namely Smt. Mukhi, Smt. Tejo and Smt. Kanto and widow Rajwant Kaur relinquished their shares in favour of other widow Harbans Kaur and daughters but mutation was wrongly recorded. Widows had 1/16 shares each. They were shown having 1/8 shares each. Plaintiffs had purchased property vide registered sale deed Ex.P4 to Ex.P16. Moreover, defendants have not disputed their ownership. No other defendant has come forward except defendants No.5 to 9, 11, 13 to 15, 29 to 32 and 40. Defendants No.2 and 3 have not disputed their ownership. According to defendants No.2 and 3, Sukhwinder Kaur had sold not her share to plaintiffs. But that sale deed is on file. They never challenged it. So they cannot be believed.”

During the course of hearing, learned counsel for the appellants could not point out any illegality in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

16.05.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No