

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3305 of 2015 (O&M)

Date of Decision: 03.02.2017

Nirbhai Kaur

... Appellant

Vs.

Kamaljit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. B. S. Khehar, Advocate
for the appellant.

Mr. H. S. Batth, Advocate,
for the respondent.

Amol Rattan Singh, J.

This appeal has been filed by the plaintiff after her suit seeking possession of a plot measuring 248 sq. yards (fully described in the judgment of the learned Civil Judge (Junior Division), Ludhiana, was decreed by that Court but on appeal by the respondent herein (defendant), that judgment and decree was reversed by the learned first appellate Court, with the suit of the appellant-plaintiff being dismissed.

2. The facts, as taken from the judgments of the learned Courts below, are that as per the appellant-plaintiff (hereinafter to be referred to as the plaintiff), she is the owner of the aforesaid plot of land situated in the revenue estate of village Haibowal Kalan, Tehsil and District Ludhiana. She is stated to have purchased the suit land from one Mehar Singh Sandhu, resident of village Sahnewal, Tehsil and District Ludhiana, vide a sale deed registered on 22.11.2000. Mehar Singh, in turn, is stated to have purchased the plot from

one Smt. Santosh Jindal vide a sale deed registered on 20.05.1994.

In that sale deed dated 20.05.1994, it was further stated that Smt. Santosh Jindal had purchased it from one Ishar Kaur vide a registered sale deed dated 18.04.1990.

Thus, it was contended that the plaintiff had purchased the suit property after fully verifying the aforesaid original sale deed, the boundaries of the property on the spot and that she was delivered possession of the plot on 22.11.2000, i.e. the date of registration of the sale deed in her favour. She also got the mutation sanctioned in her favour thereafter and claimed to have continued in peaceful possession thereof without interference from anybody.

3. The plaintiff was stated to be posted as a Divisional Superintendent (Accounts) in the office of the Senior Executive Engineer, A.H.C. Maintenance, O & H Division, Punjab State Electricity Board, Ganguwal, District Ropar, since 1989, with her husband also being posted on a similar post at Nawanshahar.

It was contended that after retirement, the couple had thought of settling in Ludhiana, and towards that end, they had purchased the suit property. However, since they were living at Anandpur Sahib (District Ropar), it was not possible for them to keep visiting the plot frequently and when they visited it in the month of March 2004, they were shocked to see that two small "*Kacha*" rooms had been constructed over it. Upon making enquiries, they came to know that the respondent-defendant (hereinafter to be referred to as the defendant), Kamaljit Singh, had encroached upon the plot by taking undue benefit of the absence of the plaintiff, allegedly in collusion with one Sukhjinder Kaur, who is the daughter-in-law of Mohan Singh, (later referred to as Maha Singh), husband of the aforementioned Ishar Kaur, the

owner of the plot from whom Santosh Jindal had purchased the property, before selling it to Mehar Singh, vendor of the suit property to the plaintiff.

The said Sukhjinder Kaur was stated to have got executed a “false sale deed no.512 dated 07.04.2003”, of the suit property, in her favour.

4. It was, therefore, contended in the plaint that since the plaintiff had been in possession of the suit property since 22.11.2000, from the time when the sale deed was registered in her favour and her predecessors-in-interest were in possession since 18.04.1990, therefore, the sale deed dated 07.04.2003, in favour of the defendant, was null and void even in terms of Section 48 of the Transfer of Property Act, 1882.

The plaintiff having approached the defendant requesting him to hand over the vacant possession of the property, he instead filed a suit for permanent injunction against her.

Hence, it was contended that the defendant being in illegal possession of the suit property, she was constrained to file the suit seeking possession of it, on 28.10.2005.

5. Upon notice issued to him, the defendant filed his written statement taking preliminary objections on maintainability as he contended that he had purchased the property from Sukhjinder Kaur aforesaid, vide the aforementioned registered sale deed dated 07.04.2003. It was further contended that, in fact, Sukhjinder Kaur was the actual owner of the suit property.

Yet further, it was contended that in the sale deed dated 22.11.2000, executed by Mehar Singh Sandhu in favour of the plaintiff, no boundaries of the property sold had been mentioned, whereas in the sale deed dated 07.04.2003, executed by Sukhjinder Kaur in favour of the defendant,

the boundaries had been clearly mentioned. As per the defendant, in the sale deed in favour of the plaintiff, five khasra numbers were given, i.e. khasra nos.12//5/2, 15/2, 13//10, 11/1, 12/2 and as such, the plaintiff herself was not clear as to where her plot was exactly located and therefore, it could not be identified with the property owned and possessed by the defendant. In fact, as per the defendant, the boundaries mentioned in the plaint also did not tally with the boundaries mentioned in the sale deed in favour of the defendant. Yet further, it was stated in the written statement that the defendant and plaintiff had purchased the suit property from two different persons and that the plaintiff had in fact, not come with clean hands to the Court.

As per the defendant, the plaintiff had sought a relief of injunction “by way of a counter-claim”, with the defendant admittedly in possession of the suit property, even having raised construction thereupon and having got his electricity connection installed.

Thus, he claimed to be the absolute owner of the property.

6. From the aforesaid pleadings of the parties, the following issues were framed by the learned Civil Judge:-

- “1. Whether plaintiff is entitled to take possession of suit property as prayed for? OPP
2. Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether suit is not maintainable in the present form? OPD
4. Whether plaintiff has not come to the court with clean hands and has not suppressed material facts from the court? OPD
5. Whether the present suit is false and frivolous as prayed for? OPD
6. Relief.”

7. The plaintiff examined herself and her husband, Balwinder Singh, as also one Ravi Kumar and the aforesaid Mehar Singh, as PWs1 to 4 respectively.

She also tendered various documents in evidence, including the sale deed in her favour, a “*jamabandi*” for the year 2001-02, an inspection report and a site plan.

8. The defendant examined himself, one Sanjiv Kumar, (Lower Division Clerk from the electricity department), Ajay Kumar, Meter Reader, one Roop Singh and the defendants' vendor, Sukhjinder Kaur, as DWs1 to 5 respectively. He too led various documents in evidence, including the order sanctioning the electricity connection, another order disconnecting the connection for default of payment, some electricity bills and the sale deed in his favour.

9. On appraisal of aforesaid evidence and considering the pleadings and arguments made before her, the learned Civil Judge found that in the *jamabandi* for the year 1991-92, Ex.P13, the sale by Smt. Santosh Jindal to Mehar Singh was duly depicted in the form of a sanctioned mutation, no.17755.

Similarly, in the *jamabandi* for the year 1996-97, the sale by Mehar Singh to the plaintiff was also reflected by a mutation sanctioned, bearing no.23787. The subsequent *jamabandies* also depicted the name of the plaintiff to be the owner.

It was also noticed that PW3, Ravi Kumar, had deposed that on the request of Balwinder Singh, PW2, husband of the plaintiff, he had inspected the plot comprised in khasra Nos.12//5/2, 15/2, 13//10, 11/1, 12/2, as depicted in the *jamabandi* for the year 1996-97 and that the plot was owned

by the plaintiff in terms of the sale deed dated 22.11.2000. This witness also deposed that the plot was identified by Balwinder Singh and that he got the measurement of the plot done at the site. PW3 also testified in favour of the site plan prepared by him and the inspection report, Exs. P10 and P9 respectively.

10. On the other hand, the testimonies of the witnesses for the defendant, including the officials from the electricity department, were also noticed to the effect that the electricity connection was sanctioned in favour of the defendant and was being shown in his name at least since 09.02.2004.

The respective vendors of the plaintiff and the defendant, i.e. Mehar Singh and Sukhjinder Kaur, deposed in favour of their vendees, in terms of the stand taken by the two parties in their pleadings.

11. The learned Civil Judge however observed that it had been argued by counsel for the defendant, that the defendant and the plaintiff were co-owners of the property; however, the said stand was not reflected anywhere in the written statement, in which, in fact, it was claimed that the defendant was the absolute owner thereof.

It was further noticed that Ajay Kumar, Meter-Reader-cum-Ledger Clerk, DW3, had also testified that for the installation for an electricity meter, the ownership of the property is not verified by the department.

Further, noticing that the meter reading, Ex.D3, was shown to be only for the period from 20.08.2005 to 20.10.2005, showing a consumption of 221 units and thereafter the meter had been disconnected for non-payment of dues on 20.12.2005, the learned Court inferred that the said electricity bill had been exhibited only to mis-guide the Court, with regard to possession of the

suit property during that period.

12. Further noticing that during his cross-examination, the defendant had admitted that he had not placed on record any document to prove his identity, stating that he had lost his voter card, Pan card, ration card and driving licence, yet he had never lodged any DDR with regard to such loss.

The licence produced thereafter, was seen to be issued on 17.11.2012, which was a date even after the date of the cross-examination of the defendant on 12.11.2011.

Yet further, the defendant even denied knowing the contents of his affidavit, Ex.DA and further admitted that he could not tell the khasra numbers given in the sale deed, Ex.P4, or the khasra numbers of the suit property. He was also not able to describe the boundaries of the property given in the plaint, nor the boundaries described in the sale deed executed in favour of the plaintiff.

He also admitted that the electricity connection was got installed by him in the year 2004 through his relative, one Ranjit Singh, who was working as a Junior Engineer in the Electricity Corporation.

Yet further, it was found by the learned Civil Judge, that the defendant had admitted that he had never seen the sale deed in favour of his vendor, Sukhjinder Kaur, at the time that he had purchased the property from her, vide the sale deed, Ex.D4, also admitting that no demarcation report was obtained by him before the execution of the sale deed.

The defendant also admitted to not having executed any agreement of sale prior to the execution of the sale deed and that he had “directly met Sukhjinder Kaur for purchasing the property”, without any property dealer being involved. Further, he also admitted that he had not

enclosed any site plan with the written statement.

13. The learned Civil Judge further noticed that the defendant in his cross-examination had also admitted that on the endorsement on the first page of the sale deed there was no signature of the Sub-Registrar and that there was also a cutting on the date mentioned on the reverse side of the sale deed, Ex.D4.

The defendant also admitted that he had not “gone through” the sale deed executed in favour of the plaintiff; however, he admitted that Mehar Singh Sandhu, through his attorney, had executed a sale deed qua the suit property in favour of the plaintiff, i.e. Ex.P1. Yet further, he also admitted that mutation qua the suit property had been sanctioned in the name of the plaintiff prior to the sanction of mutation in his name.

As regards his own vendor, Sukhjinder Kaur, the defendant admitted that she had not purchased the property that he had purchased from her but volunteered to say that it was “her ancestral property from her husband”.

14. The learned Civil Judge also noticed that in his testimony, the defendant could not give the name of the Sub-Registrar before whom he had got the sale deed executed and (more importantly) he was also not sure of the names of the witnesses to the deed.

In fact, as stated in the judgment, he also admitted that the plaintiff had purchased the suit property much prior to him having purchased it vide the sale deed, Ex.D4.

15. The testimony of DW4, Roop Singh, was also noticed by the lower Court stating that this witness admitted to knowing one Maha Singh but was unable to disclose the name of his wife or the fact that whether Maha

Singh and his wife had any land or property in their name.

[Note:- Maha Singh is stated in the judgment to be the husband of Ishar Kaur, the original owner of the suit property who, as per the plaintiff, had sold it to Smt. Santosh Jindal from whom the plaintiffs' vendor, Mehar Singh had purchased it. Obviously, in the earlier part of the judgment of the learned Civil Judge, Maha Singh has been erroneously shown to be Mohan Singh.]

DW4 further admitted that he had never seen any document of ownership in the name of the son of Maha Singh and that he had also not seen any sale deed in favour of the defendant, nor had he seen any document of ownership and possession in favour of the defendant.

16. DW5 Sukhjinder Kaur, i.e. the person from whom the defendant claimed to have purchased the suit property, admitted that she was the daughter-in-law of Maha Singh and Ishar Kaur and in her cross-examination, she also admitted that Ishar Kaur was the owner of the land and had sold it through her attorney (husband) Maha Singh, to different persons, vide different sale deeds. As per the learned Civil Judge, this witness was not aware as to who had filed the suit in the present *lis*, or even against whom it was filed. She however admitted that the sale deed Ex.D5, was executed on 03.04.2003 through a property dealer, which was seen to be a statement contrary to that of the defendant, he having stated that he had purchased it directly from Sukhjinder Kaur, with no property dealer as a go between.

This witness (DW5) was also found to be not aware of the dimensions or boundaries of the suit plot.

17. After discussing the law cited before her by both sides, the learned Civil Judge found that firstly, the defendant had never pleaded (as

already noticed) that he was a co-sharer in the suit land nor had he any placed on record any documentary evidence to that effect.

Further, it was found that as per the record of rights (“*jamabandiss*”) for the years 1981-82, 1986-87, 1991-92, 1996-97, 2001-02 and 2006-07, the property was shown to be in the ownership of the predecessors-in-interest of the plaintiff, with her having also brought on record all copies of the sale deeds executed even prior to her having acquired the suit plot.

On the contrary, since the defendant had purchased it on 07.04.2003, it was held that the sale deed in favour of the plaintiff, executed in the year 2000, would make her the true owner of the suit property. [The effect of the wordings used by the Civil Judge, would eventually translate into the said finding, further leading to her decreeing the suit of the plaintiff.]

18. Consequently on the aforesaid findings, the plaintiff was held entitled to possession of the suit property with the defendant restrained from changing its nature and from alienating it in any manner.

19. The defendant having filed an appeal before the first appellate Court, that Court, after noticing the pleadings and the issues framed, as also the evidence led by the parties, held that as per the plaintiff, she had purchased a plot measuring 248 sq. yards (eight and half marlas) comprised in khasra nos.12//5/2, 6/1, 15/2, 13//10, 11/1 and 12/2 in village Haibawal Kalan. It was further found that as per the revenue record, the total area of these khasra numbers was 27 kanals, in which Mehar Singh, predecessor-in-interest of the plaintiff, was a co-sharer in the joint possession, to the extent of eight and half out of a 540th share, as per the “*jamabandi*” Ex.P14, (for the year 1996-97). Thus, the plaintiff having purchased Mehar Singhs' share, that

is what came to be reflected in the next “*jamabandi*”, for the year 2001-02 (Ex.P15).

On the other hand, the defendant also purchased land measuring 256.66 sq. yards from the same khata, vide the sale deed, Ex.D4, from another co-sharer, Sukhjinder Kaur and he too became a co-sharer in the joint possession to the same extent, i.e. eight and half out of a 540th share, as per the “*jamabandi*” Ex.D1, also shown to be for the same year, i.e. 2001-02.

20. On the aforesaid finding, it was held that the two parties to the *lis* had purchased their respective land from different co-sharers in the khata measuring 27 kanals, in which, apart from them, there were also other joint owners. The sale deeds of the parties were duly reflected in the revenue record with specific boundaries being given in the sale deed, Ex.D4, in favour of the defendant.

The learned first appellate Court also noticed that though in the sale deed in favour of the plaintiff, specific boundaries were not given, but in the sale deed in favour of her vendor, i.e. in favour of Mehar Singh, Ex.P3, specific boundaries were mentioned.

Hence, citing a judgment of a Full Bench of this Court in **Bhartu v. Ram Sarup** 1981 PLJ 204 and another judgment in **M/s Oriental Crafts Infrastructure Ltd. v. Smt. Subhadhara** 2011 (1) Civil Court Cases 323 (P&H), it was held that both the parties to the suit are co-sharers in the joint khata, the khasra numbers of which had been detailed in the plaint, they having purchased the suit land by way of separate sale deeds to the extent of the shares of the respective vendors of both the parties. It was specifically noticed that the mutation sanctioned qua the sale deeds in respect of each party, did not show any specific part of the land in the ownership of the

parties to the *lis* or in the exclusive possession of any other co-sharers.

Hence, the learned Additional District Judge held that the only remedy with the plaintiff in order to claim possession of specific land out of the joint khata, was by seeking partition by metes and bounds, with a suit for possession of any specific area not being maintainable against a co-sharer.

This was so held by that Court, further stating that though the plea of maintainability of the suit on this ground had not been taken by the defendant, however, the Court would need to take judicial notice of it.

21. Having held as above, appeal of the defendant (respondent herein) was allowed, with the first two issues framed by the learned Civil Judge, with regard to possession of the suit property and permanent injunction against the defendant, also held against the plaintiff thereby dismissing her suit.

22. In the present appeal, the two questions of law that arise are, in the opinion of this Court, as follows:-

- i) Whether the appellant-plaintiff having been found to have purchased a plot measuring 248 sq. yards vide a valid sale deed from the larger holding in which the suit property is situate, vide a sale deed which was admittedly executed before the sale deed executed in favour of the defendant, is entitled to the benefit of Section 48 of the Transfer of Property Act, 1882?
- ii) Whether the appellant-plaintiff and the respondent-defendant are co-sharers in the suit property and if so, without the property having been partitioned, can either of the two parties be put in possession thereof.

23. Mr. B. S. Khehar, learned counsel for the appellant-plaintiff, first pointed to the testimony of Sukhjinder Kaur, from whom the defendant stated that he had purchased the suit property. Learned counsel submitted that the

affidavit does not state anywhere as to how this witness (DW5) came into possession of the suit property thereby entitling her to sell it to the respondent-defendant. In her cross-examination, she admitted that her mother-in-law, Ishar Kaur, was owner of land in respect of which she executed a power of attorney in favour of her husband, Maha Singh, enabling him to sell her property. As per the witness, she did not know to whom Ishar Kaur had sold the land through Maha Singh but she admitted that it was sold to the different persons through different sale deeds.

Mr. Khehar further pointed to the fact that as per DW5, only one plot measuring 256 sq. yards was transferred in the name of her husband, Harjit Singh, after the death of Ishar Kaur and a mutation of inheritance was accordingly sanctioned in her husbands' favour.

Thus, learned counsel contended, that the dimensions, or the description of the property transferred to her husband by Ishar Kaur, were never given, or were even known to the defendants' vendor and as such, she could not have transferred the specific plot purchased by the appellant-plaintiff from Mehar Singh Sandhu. He further pointed to the fact that, even as stated in the judgment of the learned lower appellate Court, though no exact description or dimensions of the property sold to the plaintiff was given in the sale deed executed in her favour, however, it was found that the sale deed by which Mehar Singh purchased the property which he sold to the plaintiff, duly described the dimensions and boundaries of the plot (in the sale deed executed by his vendor, Smt. Santosh Jindal).

Hence, he submitted, that in any case, DW5, Sukhjinder Kaur, could not have sold any specific plot to the respondent, she herself actually being wholly unaware of which plot was transferred to her husband upon the

death of his mother, Ishar Kaur.

24. Mr. Khehar submitted that this is the other than the fact that all transfers in respect of the specific plot that the plaintiff purchased, were duly reflected in the revenue record, as has also been held by the lower appellate Court even while reversing the judgment of the learned Civil Judge. Therefore, he contended that the finding of the lower appellate Court that possession of the suit plot could not be given to the appellant-plaintiff, is a wholly erroneous finding, when her vendor, Mehar Singh Sandhu, was in specific ownership of it, even as per the sale deed in his favour, whereas the respondent-defendants' vendor was never in ownership of any specific plot.

He further submitted that Mehar Singh Sandhu could not have transferred any plot to the appellant-plaintiff, other than what he had purchased from Santosh Jindal with the metes and bounds thereof described, in view of the fact that Mehar Singh Sandhu had no other property in the larger chunk of land in which the suit property is situate. Hence, the plot purchased by the plaintiff necessarily had to be the one which she was given possession of and the respondent was not entitled to at least that piece of land, even if he may otherwise be found entitled to some other part of the larger land holding of 27 kanals, on account of the transfer made in his favour by his vendor, Sukhjinder Kaur, whose mother-in-law admittedly possessed more land than just the suit plot in question.

Hence, learned counsel submitted that though Ishar Kaur had, even as per DW5s' admission, sold many plots/parts of the land, the plot which actually came to the share of Sukhjinder Kaur's husband upon the death of Ishar Kaur, was never determined. Consequently, he submitted that with the plaintiff having purchased the specific suit plot from Mehar Singh, with

Mehar Singh having no other plot in that chunk of land, the plaintiff was in any case entitled to possession of the suit property prior to the respondent-defendant and as such, the finding of the learned first appellate Court, that she could not be given possession till partition proceedings are effected, was a wholly erroneous finding, in the face of Section 48 of the Transfer of Property Act.

Learned counsel submitted that, in fact, this amounted to a complete change in the relief prayed for by the plaintiff, with no specific relief prayed for by the defendant. On this aspect, he cited a judgment of the Supreme Court in **Bachhaj Nahar v. Nilima Mandal and another (2008) 17 SCC 491**. (Reference paragraphs 23 and 24 thereof).

25. Learned counsel further pointed to the testimony of the respondent-defendant as DW1, where he admitted to not knowing the khasra numbers of the property that he had purchased.

Mr. Khehar yet further submitted that there was no evidence whatsoever, with regard to any consideration having been paid by the defendant, at the time of his purported purchase of the suit plot.

He next submitted that the very fact that the only reliance of the defendant to show his possession over the suit property, was by way of electricity bills which were also only for a short period of two months, it was obvious that the bills, as also the electricity connection obtained, were also manipulated, with the connection admittedly obtained through the defendants relative, who was a Junior Engineer in the Electricity Department. Thus, he had taken advantage of the absence of the plaintiff and her husband, they being posted in a different city to where the suit property is situate, despite the fact that they were earlier in possession since the time they purchased it on

22.11.2000.

26. Refuting the aforesaid contentions of learned counsel for the appellant, Mr. H.S. Batth, learned counsel appearing for the respondent-defendant, first pointed to the written statement filed by the defendant, to submit that it had been specifically contended that the plaintiff herself was also not clear as to in which specific khasra number her suit property falls and therefore, the learned lower appellate Court had correctly held that there having been no partition effected qua the suit property, the plaintiff could not be given specific possession of any part of the suit land, till partition proceedings were duly effected and the property partitioned by metes and bounds.

He submitted that, therefore, the judgment of the first appellate Court was a very fair judgment, not specifically giving the suit property to any person till partition thereof.

27. Mr. Batth, next submitted that the suit was actually filed more than one and half years after the plaintiffs' admitted knowledge of occupation by the defendant, as even in her plaint, she stated that she and her husband came to know of the defendants' occupation thereof in the month of March 2004, but the suit was still instituted only on 28.10.2005.

Learned counsel, lastly, relied upon two judgments of this Court in support of his contentions, which are seen to be the same as those relied upon by the first appellate Court, i.e. *Bhartu v. Ram Sarup* (supra) and *M/s Oriental Crafts Infrastructure Ltd.* (supra).

28. In rebuttal, Mr. Khehar submitted that even the khasra numbers mentioned in the written statement filed by the defendant, are part of the “*jamabandi*” for the year 2001-02 (Ex.P15), wherein the appellant is shown

to be in possession of the suit property.

He submitted that thus, the finding of the lower appellate Court that neither of the parties was in exclusive possession of the suit land was factually incorrect, in view of the fact that the defendant admitted his possession of the suit land and tried to fortify that by producing electricity bills and in any case, the appellant-plaintiff does not deny the possession of the respondent-defendant over the suit property, such possession having been illegally taken by him behind her back, leading to her filing the suit for possession in the present *lis*.

Learned counsel next submitted that the plaintiff had also filed a complaint against the defendant qua the suit land.

Mr. Khehar thereafter reiterated that there was no document to show ownership of the vendor of the defendant, i.e. Sukhjinder Kaur, of the suit property.

29. This averment, even at that stage, was countered by Mr. Bath, learned counsel for the respondent-defendant, by pointing to the “*jamabandi*” Ex.D1, which is also seen to be a “*jamabandi*” for the year 2001-02, wherein the defendants' vendor, Sukhjinder Kaur (DW5), is shown to be also owner in possession to the extent of an eight and half share out of 540, in the same khasra numbers in which the appellant-plaintiff is shown to be owner in possession of exactly the same share as per the “*jamabandi*” for the same year, i.e. Ex.P15.

30. Mr. Khehar again reiterated by pointing to the cross-examination of DW5, wherein she stated that she did not know either the description of the plot, nor specifically with regard to how she herself became its owner.

(It needs to be noticed at this stage itself that undoubtedly DW5

did not specifically state as to how she became the owner of the property but the inference would be obvious from her testimony to the effect that a plot of 256 sq. yards came to be transferred to the name of her husband after the death of her mother-in-law and thereafter, her husband died in the year 1999. Obviously, thereafter, she took herself to be the owner of her husbands' property, being at least one of his legal heirs, with no issue specifically framed or any discussion seen either in the evidence or in the judgments of the Courts below, with regard to any other legal heir.)

In this context, in rebuttal, Mr. Khehar also pointed to the cross-examination of the defendant himself as DW1, where he admitted to never having seen any sale deed or document executed in favour of Sukhjinder Kaur by which she became the owner of the suit property.

31. Having considered the arguments raised before this Court and the judgments of the courts below, on principle though I find no error in the judgment of the learned first appellate Court, to the effect that with admittedly no partition having taken place of the larger chunk of land in which the suit plot is located, and therefore the final remedy with both, the plaintiff and the respondent, would be to only seek due partition thereof by metes and bounds, to determine the exact boundaries of the shares that they purchased in the larger holding, from their respective vendors, i.e. Mehar Singh Sandhu (PW4) in the case of the plaintiff and Sukhjinder Kaur (DW5) in the case of the defendant, however, in the opinion of this Court, what the learned lower appellate Court completely lost sight of, was the fact that the plaintiff had admittedly purchased the same share, i.e. eight and half out of 540th share in the larger chunk of 27 kanals of land, comprised in the same khasra numbers as were cited in paragraph 1 of the plaint, as also in paragraph 1 of the written

statement. These khasra numbers are seen to be the same not only in the respective pleadings of the parties but also in the “*jamabandis*” (records of rights) set up in their respective favours, by both parties, i.e. Exs.P15 and D1 respectively. As already noticed, both these “*jamabandies*” are for the same year, 2001-02 and the plaintiff and the defendant are both shown to be owners in possession of an eight and half of the 540 shares of the total land holding comprised in the following khasra numbers:-

“12//5/2, 6/1, 15/2, 13//10, 11/1, 12/2 in khata no.2210, khatoni no.2441.”

Thus, seemingly at least, it would appear that actually it is the same plot in question. However, nothing is said in that regard finally by this Court, as it would be subject matter of determination in partition proceedings, when the respective shares of all share holders in the aforesaid 27 kanals are finally determined. It is quite possible that the plaintiff and the defendant may both eventually be found entitled to eight and half shares each out of the total 540 shares in the 27 kanals that are shown to be in the ownership of different persons, as per the revenue record.

32. Even so, this Court would not overlook the fact that the plaintiff having established before both the Courts below, as a matter of fact, that she had purchased her aforesaid share from Mehar Singh Sandhu and the sale itself not having been found to be invalid or illegal in any manner, each prior transaction of the sale of the suit property having been found to be proved even as per the revenue record and documentary evidence referred to, the plaintiff would be entitled to the plot of which possession was taken by the defendant, his ownership and possession admittedly being at a later point of time than that of the plaintiff. The plaintiff purchased the suit property vide a

registered sale deed bearing Vasika No.12159 dated 22.11.2000. The defendant, on the other hand, admittedly purchased it vide a sale deed bearing Vasika No.512 dated 07.04.2003, from his vendor, Sukhjinder Kaur. Thus, even without partition, the plaintiff having purchased exactly the same share from her vendor, Mehar Singh, in the year 2000 in the very same khasra numbers, she would be entitled to possession of the suit property prior to the defendant, in the opinion of this Court.

It would have been a different matter if possession had not been transferred to any of the two parties to the *lis* and the question of possession had remained in limbo till the filing of the suit. That however not being the case and the defendants' possession over a specific area of the suit land, showing him to be owner of exactly the same shares as that of the plaintiff in the same suit land, in the opinion of this Court, till final determination of boundaries by metes and bounds in partition proceedings, the plaintiff is entitled to possession of the suit property even in terms of Section 48 of the Transfer of Property Act. The said provision reads as follows:-

“48. Priority of rights created by transfer.- Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”

It needs to be noticed here that creation of a right in different persons, as per the aforesaid provision, is actually relatable to a single person creating such rights at different points of time, with the opening words of the provision being “Where a person purports to create”. However, in the present case, undoubtedly the original owner of the suit property was Ishar Kaur, who is stated to have first transferred the property to one Smt. Santosh

Jindal, to the extent of 8 and half shares out of 540 shares, vide mutation No.17755, which is reflected in the “*jamabandi*” for the year 1991-92 (Ex.P13), after which the same share is seen to be transferred to Mehar Singh, vide mutation No.23787, as reflected in the next “*jamabandi*”, for the year 1996-97 (Ex.P14). Thereafter, the same share is seen to be reflected in the name of the plaintiff in the “*jamabandi*” for the year 2001-02, Ex.P15.

In the “*jamabandi*” led by way of evidence by the defendant, as already noticed, Ex.D1 shows him to be also in possession of eight and half/540th share of the same 27 kanals of land. In the “*jamabandi*” for the year 1996-97 led by way of evidence as Ex.DY, Harjit Singh, son of Ishar Kaur and Maha Singh, is shown to be in possession of a 36/540th share of the same 27 kanals of land. However, as per Ex.P14, i.e. the “*jamabandi*” for the same year led in evidence by the plaintiff, as already noticed, an eight and half share/540th share is shown to be transferred to the plaintiffs' vendor Mehar Singh vide mutation No.23787 (as already seen hereinabove).

Hence, in the opinion of this Court, with the chain of sales in respect of the land purchased by the plaintiff duly shown to be proved before and accepted by both the Courts below and specific boundaries having been described, of the plot sold to the appellants' vendor (Mehar Singh Sandhu), possession of the suit plot at this stage, should be rightfully that of the plaintiff and not the defendant, she having purchased it in the year 2000, with him having purchased an equal share in the year 2003. This would be especially so as both he (the defendant) and his vendor, Sukhjinder Kaur, admitted to not knowing the boundaries of the description of the plot purchased/sold between these parties.

33. Consequently, this appeal is allowed to the extent that the plaintiff is held entitled to the possession of the suit property as is possessed by the defendant, till such time as partition proceedings are effected so as to determine the rights of each co-sharer in the 27 kanals of land in which the suit property is admittedly located.

Upon partition proceedings being determined, if the defendant is also found entitled to an equal share in the said 27 kanals, as is the plaintiff, obviously his share would be carved out by the Court seized of those proceedings; but if it is found that actually the eight and half shares out of 540, in the said 27 kanals of land, is the same as that which falls to the share of the plaintiff, the plaintiff would be entitled to continue as owner in possession of the suit land if no other land is found available so as to satisfy the defendants purchase of an 8 and a half share of the total holding of 27 kanals.

Thus, he would obviously lose out ownership and any chance of possession, to the plaintiff, for the same reason, i.e. that she being a purchaser prior in time to him, her right would take priority over his.

In such a situation, the remedies of the defendant against his vendor would obviously be open to him, if it is established that his vendor sold a share of the land to him, which actually already stood sold off by her mother-in-law and the successors-in-interest of her mother-in-laws' vendee, Smt. Santosh Jindal.

34. Consequently, the decree issued by the learned lower appellate Court is set aside and the suit of the appellant-plaintiff is decreed to the extent that she is held entitled to possession over the suit property, presently held by

the respondent-defendant, but with final determination of the exact metes and bounds of her entitlement to be determined in partition proceedings of the joint holding of the land of 27 kanals, described in paragraph 1 of the plaint.

The respondent would hand over possession of the suit land to the appellant within a period of three months, failing which she would be entitled to get the decree executed in appropriate proceedings.

The appellant would also be entitled to costs of Rs.5000/-.

A decree sheet be prepared accordingly.

February 03, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

1.Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes