

RSA No. 4117 of 2015 (O&M)

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

**RSA No. 4117 of 2015 (O&M)
Date of Decision: 29.8.2017**

Sardool Singh and others

.....Appellants

Vs.

Ajmer Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Amit Arora, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 3.4.2015, whereby first appeal of the plaintiffs was allowed by the learned first appellate court, setting aside the judgment and decree of the learned trial court, defendants have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that plaintiffs had instituted a suit for declaration to the effect that they were owners in possession in respect of land measuring 108 kanals 1 marla, out of total land measuring 245 kanals 13 marlas, as per jamabandi for the year 2005-06, situated in the Jhabal Kalan, Tehsil and District Tarn Taran. With consequential relief of permanent injunction restraining the defendants forever from interfering into the exclusive, peaceful and lawful possession of the plaintiffs over the land

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bearing khasra Nos. 65/6/1/, 6/2/, 64/10/1, 64/1, 63/15/1, 16 and 25 forcibly, illegally or otherwise than in due course of law on the avements that they were exclusive owners in possession of the aforesaid land, as they had purchased 63 kanals out of total land from one Tara Singh s/o Gopal Singh, vide registered sale deed dated 9.9.1999 for a consideration of ₹4,16,000/-. Moreover, Smt. Gurmej Kaur, during her lifetime in a sound disposing mind and out of her own free sweet will, also transferred land measuring 45K-1M out of total land in favour of plaintiffs vide registered transfer/sale deed dated 5.02.2003 but defendants, in connivance with each other, were trying to interfere into the peaceful lawful and exclusive possession of the plaintiffs over the suit land, as owners and were threatening to dispossess them from the suit land forcibly, illegally, to which they had no right to do so..

Defendants were put to notice. Defendants No. 2 to 5 and 7 to 9 did not appear before the learned trial court and they were proceeded against ex-parte. Defendant No. 1 put appearance and filed his contesting written statement, raising more than one preliminary objections. Defendants No. 6 and 10 also filed their separate written statement contesting the suit filed by the plaintiff. Plaintiffs filed their replication to the written statements. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiffs are owners in possession of the suit by virtue of sale deed dated 9.9.1999 and transfer deed/sale deed dated 5.2.2003?OPP
2. If issue No.1 is proved than whether the plaintiffs are entitled to perpetual injunction restraining the defendants from interfering in the peaceful possession over the suit land?OPP
3. Whether the suit is not maintainable in the present

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from? OPD

4. Whether the plaintiff is guilty of suppressing the true fact?OPD

5. Whether the plaintiff has no cause of action to file the present suit?OPD

6. Whether the suit is properly valued for the purposes of court fee and jurisdiction?OPP

8. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit for declaration and permanent injunction, filed by the plaintiffs, was dismissed by the learned trial court, vide its impugned judgment and decree dated 22.5.2014. Feeling aggrieved, plaintiffs filed their first appeal which came to be partly allowed by the learned Additional District Judge, vide his impugned judgment and decree dated 3.4.2015. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

It is a matter of record that plaintiffs were claiming a decree of declaration on the basis of ownership drawn by them from sale deed dated 9.9.1999 (Ex.P1) suffered by Tara Singh in favour of the plaintiffs. Again, plaintiffs were drawing their title on the strength of transfer deed dated 5.2.2003 (Ex.P3) suffered by Smt. Gurmej Kaur widow of Sh. Arjan Singh son of Jwala Singh in favour of the plaintiffs. It is also not in dispute that sale deed (Ex.P1) and transfer deed (Ex.P3) were never challenged by the defendants-appellants before any court of law. Further, on the basis of

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transfer deed suffered by Smt. Gurmej Kaur, mutation No. 1665 (Ex.PY) came to be entered and sanctioned in favour of the plaintiffs. Said mutation has not been set aside by any competent authority so far.

It is also a matter of record that partition proceedings, as per partition application (Ex.P11), were also pending between the parties. Since all these material facts and convincing evidence available on record were not properly appreciated by the learned trial court, while dismissing the suit of the plaintiffs, learned first appellate court was well within its jurisdiction in partly accepting the first appeal of the plaintiffs and the same deserves to be upheld.

Defendants had more than one occasions at their disposal to challenge the abovesaid sale deed (Ex.P1) and transfer deed (Ex.P3) but they did not do so and that too, for no good reasons. Once the appellants-defendants did not challenge the abovesaid documents of title, which were speaking volumes in favour of plaintiffs, they would indirectly admit the claim of the plaintiffs, which was squarely covered by these two material documents of title. Similarly, defendants-appellants did not challenge the order passed by the learned court below, whereby application of the plaintiffs for additional evidence was allowed.

As per jamabandi for the years 2000-01 and 2005-06, Smt. Gurmej Kaur was the absolute owner of the property which she transferred in favour of the plaintiffs by way of transfer deed (Ex.P3). Thus, plaintiffs duly proved the ownership of their vendor. Similar was the position regarding other vendors of the plaintiffs, i.e. Sh. Tara Singh who suffered sale deed in favour of the plaintiffs. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned first

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appellate court committed no error of law, while passing its impugned judgment and the same deserves to be upheld.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 13 to 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“ The sale deed dated 9.9.1999 has been duly proved on the file as Ex.P1 and its endorsement Ex.P2. Similarly, transfer deed dated 5.2.2003 has also been proved on the file as ExP3 and its endorsement Ex.P4. As per jamabandi Ex.P7 which is for the year 2005-06 revealed that Tara Singh vendor was having ½ share in khewat No. 90 (20K-4M) and khewat No. 79 (44K-13M). It has further revealed that he was having 1/16 share in khewat No. 104(180K-4M). While considering these facts, the learned lower held that Tara Singh was having 27K-9M in khewat nos. 79, 90 and 104. The learned lower court has also held that if Tara Singh was only having share to the extent of 27K-9M, then, sale deed executed by him in favour of the appellants/plaintiffs is valid to the extent to share held by him in the joint land. So the plaintiffs cannot seek declaration of 64 kanals on the basis of sale deed dated 9.9.1999 executed by Tara Singh in their favour. The finding of learned lower court is wrong because first of all as per calculation, the share of Tara Singh was 27K-12M not as 27K-9M and secondly, the appellants/plaintiffs are seeking declaration of 63 kanals on the basis of sale deed dated 9.9.1999 not 64 kanals.

The learned lower court held that the transfer deed dated 5.2.2003 in respect of land measuring 43 kanals 1 marla has been duly proved on the file by the appellants/plaintiffs by leading sufficient cogent and convincing evidence which show that Smt. Gurmej Kaur has transferred ½ share out of total

land measuring 180K-4M to the plaintiffs who are grandsons of her younger brother-in-law Tara Singh. Though in transfer deed, it is not mentioned that khasra numbers have been taken as per which jamabandi but only jamabandi for the year 2005-06 Ex.P7 is placed on the file which show that the name of Gurmej Kaur is not mentioned either in the column of ownership or in the column of cultivation and the appellants/plaintiffs were required to produce on record the jamabandi prior to the jamabandi for the year 2005-06 in order to disclose that how much share Gurmej Kaur was having in the total land measuring 180K-4M but no evidence has been brought to this effect.

It is pertinent to mention here that jamabandi prepared by the revenue authorities after five years. At the time of execution and registration of the transfer deed dated 5.2.2003 the jamabandi for the year 2000-2001 was existing. No doubt, the appellants/plaintiffs have not placed on file copy of jamabandi for the year 2000-01 in their case but they filed copy of jamabandi for the year 2005-06 which was subsequent jamabandi and was existed at the time of filing the present suit. The name of the appellants/plaintiffs incorporated in the jamabandi for the years 2005-06 in place of said Gurmej Kaur. Moreover, jamabandi for the year 2000-2001 which has been produced and proved on file by the appellants/plaintiffs in way of leading additional evidence Ex.PX clearly shows that Gurmej Kaur widow of Arjan Singh son of Jawala Singh was having $\frac{1}{4}$ share in total land measuring 180 kanals 4 marlas i.e. 45 kanals 1 marlas share and mutaiton No. 1665 Ex.PY has been duly entered and sanctioned in respect of above said transfer deed in favour of the appellants/plaintiffs. As such, it has been proved on the file that Gurmej Kaur widow of Arjan Singh was having $\frac{1}{2}$ share in the total land measuring 180 kanals 4 marlas and she has transferred by same by virtue of transfer deed dated 5.2.2003 in favour of the

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appellants/plaintiffs.

*The Hon'ble Supreme Court of India in case titled as **Rajendra Tiwary Vs. Basuedo Prasad, reported in AIR 2002 SC 136**, held that where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the facts, as established, justify granting a smaller relief to the parties. Order 7 rule 7 of Civil Procedure Code permits granting of such relief to the parties. In the present case, when the appellants/plaintiffs have proved on file the sale deed dated 9.9.1999 which has been duly executed and registered in their favour by Tara Singh in respect of land measuring 63 kanals from the suit land but as per jamabandi his share in the suit land is 27 kanals 12 marlas. So, they are entitled to get the share of Tara Singh from the suit land on the basis of the sale deed dated 9.9.1999 up to 27K-12M. The appellants/plaintiffs have also produced and proved on file transfer deed which has been executed and registered in their favour by Gurmej Kaur widow of Arjan Singh in respect of the land measuring 45 kanals 1 Marla, as such they are also entitled for declaration of land measuring 45K-1M. So, the appellants/plaintiffs are entitled to 27K-12M plus 43K-1M, i.e. total land measuring 72 kanals 13 marlas. As such, suit of the respondents is well maintainable."*

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned District Judge. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh**

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Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

29.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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