

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

**RSA No.1417 of 2017 (O&M)
Date of Decision: March 14, 2017**

Chander Singh & Ors.

..Appellant(s)

Versus

Mahinder Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ramesh Hooda, Advocate
for the appellants.

ANITA CHAUDHRY, J.

This is the defendants' second appeal seeking reversal of the orders passed by both the Courts below.

The plaintiffs' father namely Puran Singh had purchased 1 Kanal 11 Marla of land in Khasra No.495/3 for sale consideration of Rs.3,000/- in 1979. Possession was also handed over. Puran Singh died and left behind a Will bequeathing his property to the plaintiffs and the proforma defendant, plaintiff no.1 became owner of half share while plaintiffs no.2 to 4 and proforma defendant became owners of the remaining half share. The plaintiffs claim that the vendee had handed over the actual physical possession of this property on the Western side and they have constructed a big house and enclosed it with a boundary wall. A portion of 5 Marla was left on the Eastern side of the house. It was averred that Chandan Singh-defendant no.1 filed a suit in 2008

against the plaintiffs and proforma defendant seeking possession and demolition of the construction but the plaint was rejected under Order 7 Rule 11 CPC in November, 2008. Defendant no.1 filed a revision but later on filed an application seeking withdrawal of the suit and sought permission to file a fresh suit. The plaintiffs claimed that the defendants wanted to forcibly dispossess them.

The defendants' plea was that Badan Singh was owner to the extent of 1/3rd share in the suit land and he could not have sold more than his share and actual possession was not handed over and the sale deed was illegal, null & void and not binding upon their rights and it was executed without consideration and legal necessity and a result of fraud and mis-representation. Plea was also raised that it was a result of impersonation. It was pleaded that the plaintiffs and proforma defendant had illegally encroached upon the land to the extent of 12 Karam x 5 Karam, as shown with red colour marked by ABCD in the site plan. It was admitted that Chander Singh had filed an application for withdrawal of the suit. A counter claim was also filed by the defendants challenging the sale deed.

The trial Court held that the plaintiffs and the proforma defendant were co-sharers with the defendants and could not claim exclusive ownership and at the same time it held that the plaintiffs were in possession, the suit was partly decreed and the plaintiffs were held to be co-sharers along with the defendants. The sale deed dated 17.07.1979 was held to be valid. The defendants were restrained from

interfering except in due course of law. The counter claim was dismissed.

Aggrieved, the defendants filed an appeal and the judgment of the trial Court was upheld.

The Appellate Court held that the execution of the sale deed was not challenged by the father. Badan Singh remained alive for a number of years after the execution of the sale deed but did not challenge the legality of the sale deed. It noted that the sale deed was registered and the attesting witnesses had testified in favour of the plaintiffs and it made a following observations in para no.16, which deal with the main argument raised on behalf of the appellants:-

“16. Another aspect of this case is that defendants/appellants have pleaded late Sh. Badan Singh, who had executed sale deed dated 17.07.1979 in favour of father of plaintiff, could not have alienated the same as he was owner of suit land to the extent of 1/3 share, therefore, he had no authority to sell specific khasra number. However, the law in this regard is well settled that Co-sharer can transfer part of the joint property to the extent of his share and specific numbers can also be transferred but the right of the transferee under such transfer would be subject to the partition and adjustment of the shares of other co-sharers. A Full Bench of our Hon'ble High Court in ***Bhartu Versus Ram Sarup 1981 P.L.J., 204 (P&H)*** held that sale of specific portion of land out of joint holding by one of the co-owners is nothing but a sale of a share out of joint holding. Still further, our Hon'ble High Court in ***Ajit Singh (dead) through his LRs and Anr. Versus Karam Singh (dead) through his LRs Ors. 2005(1) Civil Court***

Cases 228 (P&H), held that sale of specific portion of land by particular Khasra numbers by a co-owner out of joint Khewat would be a sale of share out of joint Khewat. By following these observations and taking into account the averments of appellants that late Badan Singh had sold his share through mentioned specific khasra no vide sale deed dated 17.07.1979, the ld. Trial court arrived at correct conclusion that plaintiffs etc. who become owners thereof on the strength of duly executed will had attained status of co-owners along with defendants/appellants. Moreover, filing of suit for possession by no.1 qua suit land in the year 2008 against plaintiffs itself is a proof of plaintiffs are possessing the same, as such, ld. Trial court committed no error in passing a restraint order whereby defendants/appellants have been restrained from interfering in the possession of plaintiffs over suit land except in due course of law. Therefore, ld. Court below has analyzed and appreciated the evidence in proper manner and the findings returned on all issues so framed are fully justified by the evidence on record and supported by cogent reasons.”

I have heard the counsel for the appellants at great length.

The copy of the Jamabandi for the year 1974-1975 has also been placed on record. Badan Singh is recorded to be co-sharer of 1/3rd share of the land, which measures 180 Kanal 11 Marla. A small portion of 1 Kanal 11 Marla had been sold. The appellants' claim is that their father Badan Singh had only 1/3rd share in this specific number and only that area could be sold. Admittedly no suit for partition had been filed. Both the Courts below have dealt with the issue correctly holding that

the sale of specific portion of land by the co-owner out of the joint Khewat would be sale of share and the plaintiffs would become co-owners with the defendants and they were rightly restrained from interfering in the possession of the plaintiffs except in due course of law. I find no infirmity in the findings recorded by both the Courts below.

There is no merit in the appeal and is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

March 14, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No