

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA-5719-2014(O&M)

Date of Decision:18.07.2017

Joginder Kaur

.....Appellant

Versus

Sadha Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.P.S.Brar, Advocate, for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration was dismissed by the learned trial court, vide its impugned judgment and decree dated 06.12.2010 and his appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 31.03.2014.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of this impugned judgment, are that plaintiff-appellant Harbans Singh was an old man living in Singapore as such unable to institute and prosecute the suit personally. He appointed Niranjana Singh as his attorney vide general power of attorney dated 21.09.2005.

Originally Swaran Singh and Assa Singh were owners of the suit land as fully described in the head note of the plaint to the extent of $\frac{1}{2}$ share and remaining $\frac{1}{2}$ share was owned by Harnam Singh. Harnam Singh died leaving behind four sons, namely, Harbans Singh plaintiff, Sadha Singh defendant No.1, Natha Singh deceased husband of defendant No.2

Amar Kaur and Karam Singh who died unmarried. Mutation regarding the estate of Harnam Singh was wrongly sanctioned in favour of Harbans Singh plaintiff and Karam Singh in equal shares. The share of deceased Karam Singh was mutated in the name of plaintiff only vide mutation No.759. The said mutation did not create any title and was wrongly sanctioned which led to incorporation of wrong entries in the revenue record. When this mistake was detected by the plaintiff, he executed a sale deed dated 18.11.1969 qua 2/3 share in favour of defendant Sadha Singh and Natha Singh (now deceased) which was otherwise to be inherited by them on the basis of succession regarding the estate of Harnam Singh. The said sale deed was executed with mutual understanding only to equalise the share among the three brothers. While executing the above said sale deed the plaintiff did not sell his own 1/3 share in favour of his above named two brothers. The wrong entry was made in the Jamabandi for the year 1974-75 which indicate the fact that estate of Harnam Singh was mutated in favour of the plaintiff and Karam Singh only. After the execution of sale deed dated 18.11.1969, the entries regarding ownership of the land in question were rightly incorporated in the Jamabandi for the year 1979-80 which shows that Harbans Singh plaintiff was the owner to the extent of 1/3 share, Sadha Singh and Natha Singh to the extent of 1/6 share each.

In the subsequent Jamabandies, the entries were not correctly carried out. Sadha Singh and Natha Singh were wrongly recorded as owners to the extent of 1/2 share on the basis of a wrong mutation No.914 dated 31.12.1981. The name of plaintiff had wrongly been deleted. The share of Swaran Singh co-sharer had been mutated in the names of heirs of Assa Singh as he has transferred his share. In the Jamabandi for the year

1969-70, it had wrongly been recorded that Harbans Singh plaintiff is son of Puran Singh, but in subsequent Jamabandies he is correctly recorded as son of Harnam Singh. In fact Harnam Singh father of plaintiff is son of Puran Singh. The plaintiff had been residing in Singapore before the partition of India. The plaintiff had full faith in his brothers. Now defendants No.1 to 4 asserted their right over the suit property denying the share of plaintiff and stopped giving rent to him. The plaintiff requested the defendants to admit his claim, but the defendants paid no heed, forcing the plaintiffs to come up with the present suit.

Upon notice, defendants put appearance. Defendant Nos.1 to 4 filed their joint written statement, raising more than one preliminary objections. Similarly, defendant Nos.5 to 8 and 12 filed their separate written statement opposing the claim put-forth by the plaintiff. Replication was filed by the plaintiff. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP*
- 3. Whether the plaintiff is entitled to relief of joint possession as prayed for?OPP*
- 4. Whether the suit is not maintainable?OPD*
- 5. Whether the suit is time barred?OPD*
- 6. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 7. Relief.”*

In order to prove their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going

through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has failed to prove his pleaded case by leading cogent and convincing evidence. Accordingly, his suit for declaration was dismissed by the learned trial court, vide its impugned judgment and decree dated 06.12.2010. Feeling aggrieved, plaintiff filed his first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 31.03.2014. Hence, this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Before proceeding further, it is pertinent to note that during the pendency of the appeal, appellant-Harbans Singh died and his legal representatives were brought on record. Facts of the case as well as *inter se* relationship between the parties are hardly in dispute. Late Shri Harnam Singh, father of the plaintiff and defendants were owners in possession to the extent of $\frac{1}{2}$ share of the land measuring 166 kanal 4 marlas. Ownership of Late Shri Harnam Singh was 83 kanal 2 marlas. Shri Harnam Singh had four sons, namely, Harbans Singh-plaintiff, Sadha Singh, Natha Singh and Karam Singh.

In this view of the matter, as per natural succession, all the four brothers were entitled to inherit the suit land left behind by their father to the extent of $\frac{1}{4}$ th share each. Since Shri Karam Singh was unmarried and died issueless, his $\frac{1}{4}$ th share would also devolve upon his three brothers, namely, Harbans Singh-plaintiff, Sadha Singh and Natha Singh in equal shares i.e. $\frac{1}{3}$ rd share each. It was the own pleaded and argued case on behalf of the appellant that on the death of Shri Karam Singh, brother of the plaintiff, share of Karam Singh came to be mutated in favour of the plaintiff.

This was the reason that when all the three brothers realize this mistake, plaintiff transferred the land measuring 36 kanal 17 marlas in favour of his other brothers, namely, Sadha Singh and Natha Singh. Since the plaintiff was not entitled for more than 1/3rd share, his suit was bound to fail. 1/3rd share admittedly comes to 27 kanal 7 marlas. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 18 and 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“By going through the Jamabandi qua the suit property for the year 1969-70 Ex.P-10 it reveals that Harbans Singh and Karam Singh are co-owners to the extent of ½ share and remaining share was owned by Swaran Singh and Assa Singh. Perusal of Jamabandi qua the suit property for the year 1974-75 Ex.P-9 shows that vide mutation No.847 the estate of Karam Singh was inherited by Sadha Singh, Natha Singh and Harbans Singh sons of Harnam Singh.

It is admitted fact of the parties that the land measuring 166 kanals 4 marlas was in the ownership of Swaran Singh and Assa Singh to the extent of ½ share and Harnan Singh to the extent of ½ share. Harnam Singh father of plaintiff and defendants is having ½ share in total 166 kanals 4 marls i.e. 83 kanals 2 marlas. As per the case of the plaintiff after the death of Harnam Singh, the suit

property was mutated on the basis of natural succession in favour of plaintiff and Karam Singh only, Estate of Harnam Singh was not mutated in favour of other two brothers Sadha Singh and Natha Singh.

Plaintiff Harbans Singh alleges that when this mistake came to his notice he executed sale deed dated 18.11.1969 qua 2/3 share of the property in favour of Sadha Singh and Natha Singh in equal shares. Subsequently, third brother Karam Singh died and he was issueless.

If Harnam Singh was owner of ½ share from total 166 kanals 4 marls. The share of Harnam Singh in the suit property comes to 83 kanals 2 marlas. Harnam Singh has four sons Harbans Singh plaintiff, Sadha Singh, Natha Singh and Karam Singh. Karam Singh died issueless and estate of Harnam Singh inherited by his three sons namely Harbans Singh, Sadha Singh and Natha Singh in equal shares i.e. 27 kanals 7 marlas each.

As per the version of plaintiff the suit property was mutated in the name of two brothers and as per that version plaintiff became owner of land measuring 41 kanals 11 marlas, but he is claiming that after the death of Karam Singh he became owner of 55 kanals 8 marlas.

The sale deed dated 18.11.1969 executed by plaintiff reveals that he alienated 2/3 share out of 55 kanals 8 marlas in favour of Sadha Singh and Natha Singh, who has actual share of 27 kanals 7 marlas in the estate left by Harnam Singh, his father. The 2/3 share out of 55 kanals 8 marlas comes out 36 kanals 17 marlas. From all this, it can be gathered that plaintiff has already alienated more than his share in the suit property as he was actually having 27 kanals 6 marlas fallen to his share and as per sale deed dated 18.11.1969, he alienated 36 kanals 17 marlas. As such, he is not entitled to the relief of declaration and permanent injunction as prayed for. Since

the plaintiff has already sold out more than his share, as such, the plaintiff has miserably failed to show on the file that how he is entitled to the alternative decree for joint possession as co-sharer when he has no share left in the suit property. The learned lower court has rightly decided issues No.1 to 3 against the plaintiff.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

July 18, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No