

R.S. A No. 5166 of 2017 (O&M)

-1-

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

R.S. A No. 5166 of 2017 (O&M)

Date of Decision:5.12.2017.

Sarabjit Kaur

.....Appellant

Versus

Tarlochan Singh (since deceased) through LR's and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. N.P.S. Mann, Advocate
for the appellant.**

AVNEESH JHINGAN, J.

This regular second appeal is at the behest of the plaintiff being aggrieved of concurrent dismissal of her suit for declaration, separate possession and permanent injunction. The plaintiff has filed a suit for declaration to the effect that the plaintiff is joint owner in possession to the extent of 1/5 out of the land, as fully described in the head note of the plaint and separate possession by way of partition of 1/5 share out of said land and permanent injunction restraining the defendants No.1 and 2 from alienating and dispossessing the plaintiff from the suit property illegally and forcibly.

The parties for the sake of convenience are being referred to as per their status in the original suit.

The facts of the case, as averred by the plaintiff, are that she and defendants No. 2,3 and 4 are children of defendant No.1. The plaintiff and defendants No. 3 and 4 are the daughters and defendant No.2 is son. The suit property was owned by Rattan Singh and he was survived by defendant No.1. It was alleged that defendants and plaintiff are the co-parceners in the suit property and have a birth right. Defendants No. 1 and

2 in collusion got the sale deed of suit property registered in favour of defendant No.2. It was alleged that sale deed was illegal, null, void and without any consideration. The plaintiff averred that she came to know about the sale deed in June 2012 and thereafter, applied for certified copy of Jamabandi. Defendants No. 1 and 2 were not admitting her claim and hence, the suit was filed.

On notice, defendants No. 1 and 2 filed their written statement raising preliminary issues. On merits it was averred that the property had been transferred in favour of defendant No.2 and the mutation has been sanctioned. It was denied that the transfer was made to defeat the rights of plaintiff. Defendants No. 3 and 4 filed separate written statement reiterating the stand taken by defendants No. 1 and 2.

The learned Trial Court framed the following issues:

- "1.Whether the plaintiff is owner in possession of the suit property? OPP
- 2.Whethere the plaintiff is entitled to the relief of permanent injunction and declaration as claimed for?OPP
- 3.Whether defendants No. 1 and 2 have colluded with each other ?OPP
- 4.Whether the suit filed by the plaintiff is not maintainable?OPD
- 5.Whether the suit of the plaintiff is not properly valued?OPD
- 6.Whether the suit filed by the plaintiff is time barred?OPD
- 7.Whether the suit is based on false and frivolous grounds?OPD
- 8.Relief."

The plaintiff, in order to support her suit, herself appeared as

PW1 and also examined Hakam Singh, Amrinder Singh, Sukhraj Singh, Nirmal Singh, Rajinder Pal Singh-Special Kanoongo as PW2 to PW5 respectively. The revenue record including various Jamabandis, mutation, pedgree-table, excerpt etc were produced as Ex.P1 to Ex.P5.

In order to rebut the claim, defendant No.2 himself appeared as DW1, Sukhwinder Singh, Surjit Singh and Manjit Singh deposed as DW2 to DW4 respectively. Notarized copy of transfer deed, jamabandis and khasra girdawari, were exhibited as Ex.D1 to Ex.D6.

The learned trial Court after appreciating the facts and considering the evidence produced, decided issues No. 1 to 3 against the plaintiff. Issues No. 4 and 7 were decided in favour of the plaintiff and against the defendants and issues No.5 was decided in favour of the plaintiff. The net result was that vide judgment and decree dated 5.10.2015 the suit was dismissed.

Aggrieved of the said judgment and decree, the first appeal was filed. Learned Additional District Judge, Ludhiana, vide judgment and decree dated 26.4.2017 dismissed the appeal.

Hence, the present regular second appeal.

The basic issue involved in the present litigation is that it has been contended that the suit property is an ancestral Joint Hindu Family Coparcenary property. If it is held to be a Joint Hindu Ancestral Property, the plaintiff prayed for declaration to the effect to be a joint owner in possession to the extent of 1/5th of the suit land, as being daughter of defendant No.1. she had a birth right in the said property.

There is no dispute raised regarding the legal proposition. It has not been disputed that the onus to prove that the suit property was an

ancestral property was on the plaintiff. The rest of the issues flow from the above proposition. If it is held to be a joint property, thereafter, the issue that defendants No. 1 and 2 in collusion transferred the suit property in favour of defendant No.2 vide registered sale deed, will have to be considered. The Courts below gave a concurrent finding that the plaintiff has failed to discharge the initial onus placed on her that the suit property is an ancestral property. The plaintiff herself deposed in favour of her pleadings. She examined Rajinder Pal Singh, Special Kanungo, who brought the summoned record Ex.P5/1 to Ex.P5/47 prepared by Pawan Kumar, Kanungo, regarding land of Tarlochan Singh of village Chuaharpur, Tehsil and District Ludhiana. The plaintiff produced mutations prior to the period of consolidation proceedings and further tried to prove excerpt to link the above mutation and jamabandis of period after consolidation. The above excerpt was prepared by Pawan Kumar. The said evidence was appreciated by the Courts below and the same was rejected on two grounds firstly that excerpts were prepared by Pawan Kumar, Special Kanungo, who had not been examined. Secondly, it was held that even from these jamabandis and mutation, the plaintiff failed to prove that the suit property was ancestral property.

In the present appeal, three substantial questions of law have been framed, which are reproduced below:

- (a) Whether the Ld. Courts below have ignored the evidence produced by the appellant/plaintiff and have misread the evidence causing injustice to the plaintiff?
- (b) Whether both the courts below have not ignored the settled law and passed judgment and decree which is contrary to law?

(c) Whether the documentary evidence relied by the plaintiff are not public document per se admissible in evidence?

At the time of arguments, the counsel only addressed on question No. (c). His argument is that the Courts below have erred in holding that excerpt has not been proved. His reliance was on Section 35 of Evidence Act, 1872 (for short 'the Act'). He contended that these were public documents and were *per se* admissible.

No other issue was raised.

The contention raised by learned counsel cannot be accepted.

Section 35 of the Act, cannot be pressed into service in the facts of the present case. The revenue record is a public document and revenue excerpts are not public documents and cannot be accepted as it is because they do not carry the presumption of correctness. These have to be formally proved by examination in the witness box of the person who had prepared it, on the basis of the entries in various settlement record and jamabandis. In the present case, the excerpts were prepared by Pawan Kumar Special Kanungo but the plaintiff examined Rajinder Pal Singh Special Kanungo as PW6. He only identified signatures of Pawan Kumar.

This Court has consistently held that until and unless excerpts are proved, these are no evidence and must not be treated as such.

Reliance in this regard is placed upon decision of this Court in **Banta Singh and others v. Phuman Singh and another** 1972 PLR 275, wherein it has been held as under:

"The revenue excerpt is no part of the record of rights and does not carry any presumption of correctness. It has to be formally proved by examination in the witness box of the person who has prepared it on the basis of the

entries in the various settlement records and jamabandis. It is an extract or synopsis of entries collected from diverse places and its value depends on how truly it has reproduced the original entries. If there is any doubt depends on how truly it has reproduced the original entries. If there is any doubt about a particular entry in the excerpt, it will always be open to the Courts to have it removed by reference to the original records on the basis of which the excerpt was prepared."

In case of *Gurmail Singh Versus Rajbir Singh and another*, 2014 (4) RCR (Civil) 397, this Court following the decision of Banta Singh's case (supra) held as under:

"16. In any case, the burden was upon the plaintiff to prove the nature of the property in dispute, but he has failed to prove by producing cogent evidence and the excerpts (Ex.P1) relied upon by the plaintiff is inconsequential because the person, who had prepared the excerpt, while appearing as PW1 has categorically stated in his cross-examination that he has not brought the original record from which he has prepared this excerpt nor this record is with him and he was unable to say anything about the property being ancestral or non-ancestral."

In case of *Hawa Singh Versus Daya Nand and others* 2010 (21) RCR (Civil) 918 held in Para-19 as under:

"19. The aforesaid rules provide that unless excerpts prepared by Kanungo or Patwari Moharrir is proved, it is not an evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must bring the original record when they go to the Court for their examination so that it may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the

original records and as a rule, the Court should compare with the original record some of the entries in the abstract and initial and put a date on the entry so compared. In the present case, however, no such presumption can be attached. Therefore, it cannot be said that the plaintiff has been successful in proving the nature of land to be ancestral so as to maintain his suit."

It is further important to note that High Court Rules and orders, under Chapter 9, Rule 5(v) and (vi), prescribed the procedure for proving the excerpt, the same are reproduced as under:

"(v) Excerpt should be a true copy and should be proved- Court must remember that unless proved, the excerpt of the Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring with him the original records from which his excerpt has been complied, so that it may be available for comparison. He must always be put on oath and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpt must be a correct copy of such portions of the records as are relevant and not merely a summary or paraphrase.

(vi) Comparison with original-The Court should, as a rule, compare, with the original records some of the entries in the abstract and initial and date those thus compare."

Section 35 of Evidence Act, is reproduced below:

35. Relevancy of entry in public record (or an electronic record) made in performance of duty.- An entry in any public or other official book, register or record (or an electronic record), stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in

performance of a duty specially enjoined by the law of the country in which such book, register or record (or an electronic record) is kept, is itself a relevant fact."

From the reading of Section 35 of the Act, it would be evident that it applies to public document. In other words, it would apply to revenue record. It has been consistently held that excerpts are not revenue record and there is no presumption of truth attached to them.

In such circumstance, Section 35 of the Act, cannot be pressed into service by the plaintiff.

The judgments and decrees of the lower Courts cannot be faulted with in holding that the plaintiff failed to prove the excerpt. There was nothing wrong in not accepting the same as evidence.

Though in the present appeal no issue has been raised that whether the documents relied and exhibited were enough to show that the suit property was ancestral, it may be mentioned that it is not disputed that it has to be proved that the property was coming through four male lenient decedent and the same was never partitioned.

Reliance has also been placed upon the decisions of this Court in **Taro Devi Versus Raunak Singh and others** 2013 (5) RCR (Civil) 59 and **Harpal Singh Versus Jiwan Kumar and others** 2013 (3) RCR (Civil) 795.

It is worthwhile to mention that learned Courts below, after examining the mutation and jamabandis, have recorded a finding that there were certain entries in mutation from where it was evident that a portion of the suit property was self acquired by Tarlochan Singh, by sale deed. It was further held that certain property was allotted to Tarlochan Singh.

Since, the above said issue has been decided against the plaintiff,

there is no substance left in the claim that the sale deed in favour of respondent No.2 is null and void. As respondent No.1 was absolute owner of the suit property, therefore, he could have dealt with the said property in the manner he wanted. The registered sale deed in favour of defendant No.2 cannot be questioned.

There is not even a shadow of doubt on the findings recorded by the learned Lower Courts.

In such circumstance, no fault can be found in the judgments and decrees passed by learned Courts below.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

5.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No