

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

CR No.5322 of 2012 (O&M)
Date of decision : 24.01.2018

Gurbachan Singh Mehat and another

...Petitioners

Versus

Pal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Gagandeep Singh Virk, Advocate for the petitioners.

Mr. R.S. Ghuman, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The Decree Holders are in the revision petition against the order dated 09.04.2012 partly accepting the objections filed by Pal Singh. The Learned Additional District Judge, has observed as under:-

“13. The Decree Holder/respondent claim the possession of 67K-13M land on the basis of judgment and decree dated 17.1.2007, whereas this suit was only for 20 kanals land. This 20 kanals land was sold to one Bahadur Singh by Amarjit Singh power of attorney of the Decree Holder and that sale deed has been set aside by the court and appeal has also been dismissed. So under the garb of this decree dated 17.1.2007, the decree holder/respondent wants to claim the possession of entire 67K-13M land. Since the land sold to Bahadur Singh was only of 20 kanals land, the possession of entire land cannot be handed over to the vendee. The learned lower court has taken into account the details of judgment dated 17.1.2007 which pertains only to 20 kanals land. The objector in the present case claim 47K-13M land in his

possession and his suit for specific performance is also pending and he has already paid 50% of the sale consideration therefore, the arguments advanced by the learned counsel for the objector/appellant has merits.

14. In view of my above discussion, the objection petition filed by the appellant succeeds and the same is hereby allowed. The learned lower court is at liberty to handover the possession of 20 kanals land to the respondent/decree holder, but the possession of remaining 47K-13M land should not be handed over to the respondent/decree holder as there is no decree regarding possession of 47K-13M land. The learned lower court is directed to frame issues determining the legality and validity of power of attorney given by deceased Nazar Singh in favour of Amarjit Singh dated 3.11.1992 and also frame an issue to establish who is in possession over the disputed property. Only then proceed further with the execution of application with regard to 47K-13M land. The parties to bear their own costs. The appeal file be consigned to the record room. Lower court record be returned forthwith alongwith copy of the judgment.”

It is a vehement contention of the petitioners that the learned Additional District Judge has overlooked the decree passed by the Appellate Court dated 18.04.2009, whereby the relief of possession qua the suit land i.e. 67 kanals and 13 marlas was decreed.

The head note of the plaint, reads as under:-

“Amended suit for declaration to the effect that the plaintiffs are co-owners in possession on the basis of Will dated 26.9.1989 executed by deceased father of the plaintiffs in respect of land measuring 67K-13M comprising Khasra No.929/3-15, 937/1-1, 933/0-2, Khata No.339/438-439, Khasra No.941/0-12, Kitta/1, Khata No.61/8, Khasra

No.927/6-0, 939/6-15, 940/6-15, 932/8-0, 934/8-0, 928/5-13, 930/2-0, Kitta/11, Khata No.44/64-65, 240/334, 478/613, Khasra No.390/7-8, 391/7-8, 392/7-0, as entered in jamabandi for the year 1995-96, Hadbast No.89, situated at Village Mehat, Tehsil Phagwara, District Kapurthala. And sale deed dated 15.9.1999 executed by defendant No.1 in favour of defendant Nos.2 to 4 alleging himself to be the attorney of plaintiffs and defendants No.5 and 6 in connivance with each other in respect of land measuring 20 kanals out of total land illegally and unlawfully in order to grab the property of plaintiffs, is not binding on the plaintiffs and the same is liable to be set aside. And mutation No.2413 sanctioned in favour of defendant No.5 and 6 on the basis of inheritance with regard to land measuring 20 kanals is also liable to be set aside. AND

Suit for permanent injunction to the effect that the defendants, their attorneys, servants and anybody else working on their behalf be restrained and prohibited forever from selling any part of property to anybody else in respect of whole of land including land measuring 20 kanals by defendant alleging himself attorney of plaintiffs and defendants No.5 and 6 and also restraining defendants No.2 to 4 from getting sanctioned mutation in their name of 20 kanals land.

And suit for possession of the suit land mentioned above.”

He has also drawn my attention to the relief granted by the First Appellate Court vide decree dated 18.04.2009. The operative part of the judgment reads as under:-

“26. Plaintiffs by way of cross objections have sought the relief of possession of the suit property. Perusal of the trial Court file shows that the plaintiffs moved an application for amendment of the plaint seeking specific relief for possession of the suit land. Amendment was allowed. In the amendment

plaint, the plaintiffs have sought the relief of possession of the suit land as during the pendency of the suit, the defendants have taken the forcible possession of the suit land. Nazar Singh was the original owner of the suit property. Plaintiffs have proved the execution of the Will Ex.P1 in their favour upon the basis of which they have become the owners of the suit property. Defendants have got no right, title or interest to remain in possession of the suit property. Perusal of the judgment of the trial Court shows that the trial Court has decreed the suit of the plaintiffs but has not dealt with the relief of possession. When the plaintiffs have been declared owners of the suit property and the defendants have got no right to remain in possession of the suit property, then the plaintiffs/cross objectors are certainly entitled to the relief of possession of the suit property.

27. *No other submission has been made by either of the counsels for the parties upon the findings of the remaining issues. Accordingly, the findings of the trial Court, upon the remaining issues, are also affirmed.*

28. *In view of my above discussion, appeal bearing No.331 of 20.2.2007, titled as Amarjit Singh Vs. Gurbachan Singh & Ors. filed by defendant No.1 fails and the same is, hereby, dismissed; whereas cross objections bearing No.10 of 17.4.2007, titled as Gurbachan Singh and Anr. Vs. Amarjit Singh & Ors., filed by the plaintiffs, succeed and the same are, hereby, accepted, holding that the plaintiffs, in addition to the reliefs already granted to them by the learned Trial Court, are **also entitled to the relief of possession over the suit property as the defendants have got no right, title or interest to remain in possession of the suit property, as discussed above.** However, in the peculiar circumstances of the case, the parties are left to bear their own costs. Decree sheets be prepared. A copy of this judgment be placed on the*

file of Cross Objections bearing No.10 of 17.4.2007, titled as Gurbachan Singh & Anr. Vs. Amarjit Singh & Ors. Trial Court record alongwith copy of judgment be returned. Both the files be consigned to the record room.”

Although, the copy of the decree sheet has not been produced but however, there is some substance in the argument of the learned counsel for the petitioners. The suit land was prima-facie 67 kanals and 13 marlas. The suit land was not 20 kanals as has been recorded by the learned Additional District Judge while passing the impugned order. The decree is prepared on the basis of reasons given in the judgment passed by the Court. For the purpose of the decision of the case, this Court is assuming that the decree is for 67 kanals and 13 marlas.

In view thereof, the impugned order is set aside. The matter is remitted back to the First Appellate Court to re-decide the dispute after examining the decree carefully. If the First Appellate Court comes to a conclusion that the decree is for possession of 67 kanals and 13 marlas, then the Court would pass a fresh order in accordance with law.

In view of the above, the present revision petition is allowed.

The parties would be at liberty to raise all the objections before the First Appellate Court.

All the pending miscellaneous applications are disposed of, if any, in view of the abovesaid order in main case.

24.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**