

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CR No.7419 of 2015
Date of decision: 16.03.2018

Jai Chand and another

..... Petitioners

Versus

Sheo Ram (deceased) through LRs
Bhagti Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Jai Bhagwan, Advocate
for the petitioners.

Mr. Ranjit Saini, Advocate
for respondents No.2, 4, 5 and 6.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-petitioners are in the revision petition against the order passed by the learned trial Court staying the proceedings in a subsequent suit under Section 10 of the Code of Civil Procedure after recording a finding that the suit property in both the suits is common between the same parties. Learned counsel for the plaintiffs-petitioners has drawn attention of the Court to the previous plaint which has been placed on the file as Annexure P-6. A careful reading of the plaint shows that the land involved in the previous suit was by and large agriculture land situated in different villages. Further, the sale deed executed by Lal Singh dated 20.11.1997 registered on 21.11.1997 was also challenged. Head note of the previous plaint is extracted as under:-

“(A) Suit for declaration to the effect that the plaintiffs No.1 to 3 are owners in possession in equal share of the land measuring

250 Kanal 10 Marla, bearing Khewat Nos.377 to 380, 436, 438, 437, 441 to 448, 460/678, 379, 449, 253, 438/675, 440/678, 441/679, situated at village Balachaur, Tehsil Jagadhari, District Yamuna Nagar, as per mutation no.1121 and also owner in possession in equal share of the land measuring 16 kanal 2 marla, bearing khewat/khatauni No.96/146, 98/148, 15/23, bearing khasra nos. 21//19/2, 19/1, 20/1, situated at Village Mandoli, Tehsil Jagadhri, and also owner in possession of the land measuring 15 Kanal 18 Marla, bearing khewat/khatauni No.14/32, bearing khasra no.9//10/2/2, khewat/khatauni No.15/33, Khasra no.8//14, 15/1 min., (0-12), 17//1/2 (3-14), situated in village Mehmmodpur, Teshil Jagadhri, as per Jamabadi for the year 1992-93 and also owners in possession in equal share of land measuring 4 Kanal 16 Marla, bing 1/5th share of land measuring 24 Kanal 3 Marla, bearing khewat/khatauni No.3/4, bearing khasra no.141, 143/1 min, khewat/khatauni no.12/19 bearing khasra no.143/3 min and 151, situated in village Kalanaur, Teshil Jagadhri, District Yamuna Nagar, as per Jamabandi for the year 1991-92, and also owner in possession in equal share out of a plot no.133 measuring 20' x 50', situated in Grain Market Jagadhri, Teshil Jagadhri.

AND

Plaintiff no.4 is owner in possession of land measuring 9 Kanal 19 Marla bearing Khewat/Khatuani No.2/3 and $\frac{3}{4}$, bearing khasra no.19//13/2 (8-0) and 19//18/1 min (6-16), 19//8 min (0-3) North,

(B) and also owner in possession of land measuring 1 Kanal 4 Marla being 1/20 share in land measuring 24 Kanal 3 marla bearing khewat khatauni no.3/4, bearing khasra no.141, 143/1 min, Khewat/Khatauni No.12/19 bearing khasra no.143/3 min and 151, situated in village Kalanaur, Teshil Jagadhri and also owenr in possession of land measuring 12 kanal 16 marla bearing khewat/khatauni No.100/44, bearing khasra no.16//14 (3-10), 15/1 (2-17), 16/2 (0-17), 17/2 (5-12), situated in village Kalanaur, as per Jamabandi for the year 1991-92 and also owner in possession of land measuring 31 Kanal 5 marla being

khewat/khatauni no.31/58, 59, bearing khasra nos.35/11 (6-12), 12 (7-2), 13/1 (1-1), 13/2 (6-1), 14/1 (0-14), khewat/khatauni no.250/368, bearing khasra no.35//14/2 (0-14), khewat/khatauni no.223/446, bearing khasra no.35//43/3 (0-2), 14/4 (0-2), 14/5 (1-0, khewat/khatauni no.324/467, khasra no.35//14/6 (0-14), khewat/khatauni no.274/405, khasra no.33//4/1 (5-7), 8 min (east 1-16), situated in village Mandoli, as per Jamabandi for the year 1993-94,

(C) Plaintiffs no.5 to 7 are owners in possession in equal share of the land measuring 3 kanal 12 marla, being 3/20 share of the land measuring 24 kanal 3 marla, bearing khewat/khatauni no.314, bearing khasra no.141, 143/1 min, khewat/khatauni no.12/19, bearing khasra no.143/3 min, 151 and also owner in possession in equal share of land measuring 150 kanal 7 marla, bearing khewat/khatauni no.17/28, bearing khasra no.35//9 (8-2), khewat/khatauni no.174/257, bearing khasra no.37//10 (8-0), 11 (8-0), 12 (4-12), 20 (9-2), 38//14/1(6-0), 14/2(2-0), 15(8-0), 16(8-0), khewat/khatauni No.3/4 bearing Khasra no.30//1 (4-11), 2//1(2-0), 10/3(7-12), 11/1(2-12), 19//18/1 (1-16), Khewat/Khatauni No.3/5, 6, Khasra No.28//8/2/2 (2-10), 12(3-0), 13/1(2-6), 19(6-18), 21 (3-4), 22/1(6-8), 30//11/2/6, Khewat/Khatauni No.12/19, Khasra no.30//9/1 (0-9), 13/1/1 (0-8), Khewat/Khatauni No.2/3, Khasra no.19//7 (5-0), 4(8-0), 8(8-0), 13/2 (8-0), situated in village Kalanaur, Teshil Jagadhri, District Yamuna Nagar, as per jamabandi for the year 1991-92, and also owner in possession in equal share of land measuring 13 kanal 8 marla, bearing khewat/khatauni no.274/405, bearing khasra no.33//3(7-4), 8(6-4) West, situated in village Mandoli, Tehsil, Jagadhri, as per Jamabandi for the year 1993-94,

AND

(D)The defendants no.1 and 4 are owners in possession in equal share of land measuring 4 kanal 16 marla, being 1/5th share in land measuring 24 Kanal 3 marla, bearing khewat/khatauni no.314, bearing khasra no.141/ 143/1 min, khewat/khatauni no.12/19, bearing khasra no.143/3 min, 151, situated in village Kalanaur, as per Jamabandi for the year 1991-92 and

also owner in possession in equal share of plot no.134 measuring 20' X 50', situated in Grain Market, Jagadhri, and also owner in possession in equal share of the land measuring 57 kanal 09 marla, bearing khewat/khatauni no.2/2, 3 bearing khasra no.19//1(8-0), 11/1(0-6), khewat/khatauni No.3/5, 7, khasra no.18//5/1(7-15), 6/1(1-10), 1811/4/1(5-2), khewat/khatauni no.137/199, khasra no.4/1(1-2), khewat/khatauni no.1/1, khasra no.63//16/2 (6-13) m 17/2(6-13), 18/2 (4-15), 23(3-10), 24(10-8), 64//3(1-15), situated in village Kalanaur, as per Jamabandi for the year 1991-92 and also owner in possession in equal share of land measuring 224 Kanal 16 marla, bearing Khasra no.47//23/1(0-16), 49//3 (8-0), 2(8-0), 1(8-0), 47//21 (8-0), 22(8-0), 19(8-0), 20(8-0), 11(7-4), 27(0-16), 10(8-0), 12(8-0), Khewat No.153/227, Khasra no.50//5 (8-0), 3(8-0), 4(8-0), 40//23 (8-0), 24(8-0), 25 (8-0), Khewat/Khatauni No.153/228, Khasra no.46//16 (8-0), 17(8-0), Khewat/Khatauni No.151/222, Khasra no.46//6 (8-0), 7(8-0), 13, (8-0), 14 (8-0), 15(8-0), Khewat/Khatauni no.154/230, 231, Khasra no.46//3 (8-0), 18/2 (4-2), Khewat/Khatauni No.155/232, 233, Khasra no.46//18/1/1 (2-16), 18/1/2 (1-4), Khewat No.46//18/1/1 (2-16), 18/1/2(1-4), Khewat/Khatauni no.151/218, Khasra no.46//4(8-0) m 5(8-0), situated in village Mandoli, Teshil Jagadhri, as per jamabandi for the year 1993-94.

(E) The defendants no.2 and 3 are owners in possession in equal share of the land measuring 35 kanal 15 marla bearing khewat/khatauni no.2/3, bearing khasra no.19//14(8-0), 7(3-0), 2(8-0), 9(8-0), 12/3(4-16), Khewat/Khatauni no.40/66, bearing khasra no.19//17/2 (4-0), situated in village Kalanaur, as per jamabandi for the year 1991-92 and also owner in possession in equal share of land measuring 266 Kanal 12 Marla, bearing khewat/Khatauni no.154/230, bearing khasra no.46//1(8-0), 2(8-0), 10(8-0), 20(8-0), 21(8-0), 22(8-0), khewat/khatauni no.151/218, bearing khasra no.39//9 (5-4), 11(5-4), 19(5-4), 24(3-4), 25(8-0), khewat/Khatauni no.152/224, bearing khasra no.1(2-4), 2(6-19), bearing

khewat/khatauni no.151/218, khasra no.224 (79-5 marla), bearing khewat/khatauni no.152/225, 226, khasra no.45//4 (8-0), 5(7-8), 6(7-9), 7(8-0), Khewat/Khatauni No.47/103, bearing khasra no.45//2/1(4-0), khewat/khatauni no.71/117, bearing khasra no.45//2/2(4-0), 3/2(4-0), khewat/khatauni no.79/125, khasra no.45//3/1 (4-0), khewat/khatauni no.152/224, khasra no.40//6/3(5-11), 15(7-8), 16/1(4-19), khewat/khatauni no.152/226, khasra no.40//16(2-9), 24 (8-0), 25(7-8), khewat/khatauni no.86/132, khasra no.40//23(8-0), khewat/khatauni no.152/224, khasra no.33/21 (6-19), khewat/khatauni no.151/218, khasra no.164(2-16), khewat/khatauni no.108/159, khasra no.165(3-2), situated in village Mandoli as per Jamabandi for the year 1993-94 and also owner in possession in equal share of land measuring 4 kanal 16 marla, being 1/5th share in land measuring 24 kanal 3 marla, bearing khewat/khatauni no.314, bearing khasra no.141, 143/min, khewat/khatauni no.12/19, bearing khasra no.143/3 min, 151, situated in village Kalanaur, as per jamabandi for the year 1991-92 and is also owner in possession of one residential house no.B-1-1243, situated at Jagadhri Road, Yamuna Nagar, Tehsil Jagadhri;

AND

(F) Plaintiffs no.8 to 10 are owners in possession in equal share of land measuring 2 bigha 5 biswa bearing khewat/khatauni no.84/109, khasra no.636/2, situated in village Dusani, Tehsil Jagadhari and also owner in possession in equal share of land measuring 25 kanal 15 marla, bearing khewat/khatauni no.14/32, bearing khasra no.4//20 (9-2), 6//6 (9-0), 15/1(2-0), 8//6/2(2-5), khewat/khatauni no.15/33, bearing khasra no.15 min (3-8), situated in village Mahmoodpur, and also owner in possession in equal share of land measuring 227 kanal 05 marla, khewat/khatauni no.1/1, khara no.20/2/1, 10/2, khewat/khatauni no.3/5, khasra no.1(7-18), khewat/khatauni no.2/3, khasra no.19//5, 6, 15//1, khewat/khatauni no.100/144, khara no.44//4(1-12), 7(7-12), 14(7-12), 17(7-19), 24(8-0), 18(7-4), khewat/khatauni

no.56/89, khasra no.26//22/2, 23, 24, 32//2, 3, 4, 8, 9, 10, 11, 12/1, 13/1, 14/1, 15/1, 20/2, 21, 45//1, 46//5/2, khewat/khatauni no.57/91, khasra no.31//24/1/2, 25 khewat/khatauni no.54/87, khasra no.31//13, 14, khewat/khatauni no.58/92, khewat/khatauni no.55/88, bearing khasra no.31//15, 6/2, 7, khewat/khatauni no.58/93, khasra no.31//8, 9, and also owner in possession of ½ share in land measuring 1 kanal 15 marla, khewat/khatauni no.56/90, bearing khasra no.32//12/2(0-9), 13/2(0-9), 20/1(0-8) and also owners in possession in equal share of the land measuring 4 Kanal 18 marla share bearing 1/5th share in the land measuring khewat/khatauni no.314, bearing khasra no.141, 143/min, khewat/khatauni no.12/19, bearing khasra no.143/1min, khewat khatauni no.12/19, bearing khasra no.43/3, min, 151, situated in village Kalanaur, Tehsil Jagadhri, as per jamabandi for the year 1991-92.

(G) Defendant no.5 is owner in possession of the land measuring 74 kanal bearing khewat/khatauni no.111/159, bearing khasra no.4//9/2, 10/1, 10/2, 11, 12/1/1, 19/2/1, 19/2/2, 20/1, 22/1, 5//5, 6, 14/2, 15/1, 16/1/1, 16/1/2, 16/2, 17/1, 17/2, 25/1, situated in village Mandi, as per Jamabandi for the year 1993-94 and also owner in possession of the land measuring 28 kanal 16 marla bearing khewat/khataunni no.2/3, bearing khasra no.14//12/2, 13, khewat/khatauni no.3/4, bearing khasra no.14//28, khewat/khatauni no.5/5, bearing khasra no.14//18, 19, situated in village Kalanaur, as per Jamabandi for the year 1991-92.

And

The sale deed executed by shri Lal Singh son of Shri Khusi Ram, resident of Kalanaur in favour of plaintiffs no.5 to 7 dated 20.11.1997, registered on 21.11.1997 is illegal, wrong, null and void and not binding upon the rights of the defendants no.1 and plaintiffs no.8 to 10 and is liable to be set-aside.

AND

For permanent injunction restraining the defendants from

interfering in the actual, physical possession of the plaintiffs and also from alienating the same in any manner, whatsoever.”

It is not disputed that in the previous suit, the plaintiffs who are defendants in the subsequent suit have filed a suit on the basis of a family settlement which had been decided and first appeal is pending.

Whereas the property involved in the present suit is extracted as under:-

“Suit for declaration to the effect that the plaintiff No.1 is owner in possession of

A-Land measuring 18 marla being $\frac{1}{4}$ share of Sh. Lal Singh (now deceased) out of land measuring 3K-13M comprising Khewat No.11 Khatauni No.12, Khasra No.18//4/2/2, 5/2, 6/2, 19//10/2, 11/2, 12/2, 13/1, 18/2, 19/1, 30//8/2/1, 9/1, 10/2, 13/1/1, 143/3, situated within the revenue estate of Village Kalanaur, H.B. No.136, as per Jamabandi for the year 2006-07 along with all rights appurtenant thereto including rights of Sh. Lal Singh in Shamlat Deh.

B-Plaintiff no.1 is also owner in possession of Bethak, Cattle Shed and residential property shown in rough site plan attached with the plaint marked with letters A,C, C,D, E, F, G bounded as North- Open land and house of Vijay Singh, South – Street, East – House of Sahab Singh, West – Property of Rulia Ram, situated within the Abadi Deh of Village Kalanaur, Distt. Yamuna Nagar.

C – Plaintiff no.1 is also owner in possession of Cattle shed / tin shed consisting tractor garage and well shown in rough site plan attached marked with letters H, I, J, K bounded as North – Agriculture Land, South – Property of Rulia Ram, East – Street, West – Property of Ratna Ram situated within the Abadi Deh of village Kalanpur, Distt. Yamuna Nagar.

D – Plaintiff no.1 is also owner in possession of property / residential house/bethak shown in rough site plan attached marked L, M, N, O, P, Q, R, S, bounded as North – House of Nar Singh, South – House of Deputy, Het Ram, Jagwant etc., East –

House of Khila Ram, West – Property of others, situated within the Abadi Deh of Village Kalanpur, Distt. Yamuna Nagar on the basis of registered Will dated 10.10.1997 executed by Sh. Lal Singh in favour of plaintiffs.

AND

Declaration to the effect that mutation no.357 of Mauja Kalanaur entered and sanctioned in favour of plaintiff no.1 and defendants by ignoring the registered Will dated 10.10.1997 is null and void, not binding upon the rights of the plaintiffs, same is liable to be set aside and liable to be entered on the basis of Registered Will dated 10.10.1997.

AND

The plaintiff no.1 is entitled to receive the land acquisition payment/compensation of Khasra No.151 acquired by Land Acquisition Collector-cum-Sub-Divisional Officer (Civil), vide notification no.s0914 (E), dt. 20.04.2010 under Section 20(A) of Railway Act with consequential relief of permanent injunction restraining the defendants from withdrawing payment of Khasra No.151 from Land Acquisition Collector-cum-S.D.O. (Civil), Jagadhri

AND

E – The plaintiff no.2 is owner in possession of Shop No.339 bearing Property No.B-1/1243 and plot No.3, situated at Kalsia Sarai, near Railway Chowk, Jagadhri Road, Yamuna Nagar as per Will dated 10.10.1997 executed by Sh. Lal Singh in favour of plaintiff no.2 regarding this property with consequential relief restraining the defendants from alienating, creating any charge, changing nature and interfering into actual and physical possession of plaintiff no.2 over this property in any manner whatsoever.”

Learned counsel for the plaintiffs-petitioners has fairly admitted that the property under head note 'E' is common in both the suits. However, he submits that in the present case, the plaintiffs-petitioners have based their claim on the basis of a registered Will validity whereof was not

the issue in the first suit.

Learned counsel for the respondents-defendants has vehemently contested this position, although, he admits that the property involved in both the suits is largely different. He submits that the registered Will now set up was not pleaded in the previous suit.

Be that as it may, a subsequent suit can only be stayed under Section 10 of the Code of Civil Procedure if the Court comes to a conclusion that the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. In the considered opinion of this Court, even the issues which would require determination in the subsequent suit would be different because the subsequent suit has been filed on the basis of a registered Will which was admittedly not in issue in the previously instituted suit.

In view thereof, the order under challenge is set aside and the learned trial Court is requested to proceed with the suit.

Revision petition is allowed.

16.03.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No