

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

RSA No. 3295 of 1987(O&M)

Date of Decision:18.12.2018

Dasondha Singh

.....Appellant

Versus

Surinder Pal Singh etc.

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajesh Goyal, Advocate
for the appellant.

Mr. Surinder Mohan Sharma, Advocate
for the respondents.

LISA GILL, J.

Appellant-defendant is aggrieved of judgment and decree dated 13.02.1985, passed by the learned Sub-Judge Ist Class, Dasuya, as well as judgment and decree dated 31.07.1987, passed by the learned Additional District Judge, Hoshiarpur, whereby suit filed by the plaintiff-respondents for separate possession by way of partition, has been decreed.

Brief facts necessary for the adjudication of the case are that a suit for separate possession by way of partition was filed by the plaintiff-respondents claiming their share to the extent of half share in the properties as detailed in the plaint. It was pleaded that the property in question was jointly owned to the extent of half share each by Dewa Singh son of Budh Singh and the defendant-appellant-Dasondha Singh. Mangal Singh, Dewa Singh, Labh Singh, Harnam Singh, Hari Singh @ Atma Singh were real brothers. Defendant-Dasondha Singh, is the son of Labh Singh. Dewa Singh

and Labh Singh had joint khata of land and were claimed to be joint in mess and residence. Mangal Singh and Hari Singh had separated from Dewa Singh and Labh Singh. Harnam Singh, Hari Singh and Labh Singh pre-deceased Dewa Singh and Mangal Singh. Dewa Singh pre-deceased Mangal Singh. It was claimed that Mangal Singh succeeded to the property of Dewa Singh by way of succession. Dewa Singh died on 31.12.1979. Plaintiffs are the sons of Mangal Singh. It was further pleaded that Mangal Singh became the joint owner of the suit properties to the extent of half share as the legal heir of Dewa Singh. Mutation with regard to the land of Dewa Singh was sanctioned in favour of Mangal Singh, who also died on 31.03.1982. Plaintiffs claimed to be the sole legal heirs of Mangal Singh on the basis of a registered will dated 09.05.1973. Plaintiffs claimed to be owners of half share of the land along with Dasondha Singh son of Labh Singh. They could not derive further benefit of their share with the land being joint. Defendant refused to partition the properties. Hence the suit was filed.

Defendant-appellant contested the suit while claiming that his father-Labh Singh was the exclusive owner and in possession of the properties. After death of Labh Singh, defendant-appellant-Dasondha Singh claimed to be in possession of the suit properties as its absolute owner. It was stated that Dewa Singh had nothing to do with the suit property and had no right or title therein. Execution and validity of the will dated 09.05.1973 was contested. Defendant claimed that a family settlement/agreement was arrived at between Labh Singh, father of the defendant and Dewa Singh, alleged predecessor-in-interest of the plaintiffs in the year 1955. Two sale deeds dated 20.11.1978 and 24.01.1979 were registered in favour of the sons

of defendant-Dasondha Singh by Dewa Singh. It was denied that the plaintiffs had any right or title in the properties in question. Dismissal of the suit was prayed.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are joint owners of the property in dispute to the extent of $\frac{1}{2}$ share as alleged in para no.2 and 2 of the plaint?OPP
2. Whether the site plans filed by the plaintiffs are wrong? If so to what effect?OPD
3. Whether the plaintiffs are estopped by their act and conduct from filing the present suit?OPD
4. Whether the defendant has acquired title in the suit property by adverse possession as alleged in preliminary no.5 of the written statement?OPD
5. Whether any family settlement was arrived at between Dewa Singh and Labh Singh on 13.08.1955? if so to what effect?OPD.
6. Relies.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case as well as the evidence on record, decreed the suit filed by the plaintiffs while concluding that no reliance could be placed on the document Mark L i.e. the family settlement relied upon by the appellant. It was concluded that the documentary evidence on record i.e. Jamabandies for the year 1954-55, 1956-57 (Ex.P-10 and P-11) reflect Khasra Nos. 16149/810 and 16150/811 to be in joint ownership Labh Singh and Dewa Singh to the extent of half share each. Dewa Singh and the defendant, it was observed are reflected to be joint owners in the Jamabandi for the year 1981-82 (Ex.P-16). Therefore, the settlement reflected in document Mark L was never acted

upon. Moreover, partition with respect to the abovesaid two khasra numbers was never reported to the revenue authorities, therefore no title could pass to the defendant. It was held that the plaintiff-respondents are the joint owners of the property in question to the extent of half share of the suit land along with the defendant. It was however held that the plaintiffs are not entitled to the share in the construction standing on the properties in dispute as it was proved on record that the construction thereon had been raised by the defendant. Preliminary decree for partition of the property in two equal shares was passed in favour of the plaintiffs while holding that the plaintiffs are not entitled to any share in the construction standing on the suit property.

Appeal preferred by the defendant was dismissed by the learned Additional District Judge, Hoshiarpur, vide judgment dated 31.07.1987.

Cross-objections filed by the plaintiff-respondents were also dismissed. No appeal has been preferred by the plaintiffs *qua* rejection of their cross-objections.

Aggrieved from the verdict, present appeal has been filed by the appellant-defendant challenging the aforementioned judgments and decrees dated 13.02.1985 and 31.07.1987, respectively.

Learned counsel for the appellant-defendant vehemently argues that both the learned Courts below have grossly erred in passing preliminary decree to the extent that the plaintiffs are entitled for partition of the suit property to the extent of half share. It is submitted that there is gross misreading of evidence inasmuch as sale deeds dated 20.11.1978 and 24.01.1979 pertaining to the suit property have not even been discussed by both the learned Courts below, neither have Courts below appreciated the

effect and import of judgment and decree dated 26.05.1984 passed by the learned Sub Judge Ist Class, Dasuya in a suit for possession filed by the sons of defendant/appellant-Dasondha Singh. The said suit was decreed in favour of the sons of the defendant on the basis of the sale deeds dated 20.11.1978 and 24.01.1979. Appeal filed by the plaintiff-respondents against this decision was dismissed by the learned Additional District Judge, Hoshiarpur on 23.10.1986. Furthermore, RSA No. 149 of 1987 preferred by plaintiff-Gurbachan Singh and others was also dismissed by this Court on 03.07.2014. It is contended that document mark L was in-fact duly proved by DW-3-Hari Dev and DW-4-Sardar Singh. Property in dispute is within the *lal lakir* of the village. It is thus prayed that this appeal be allowed and both the judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff be dismissed throughout.

Learned counsel for the respondents per contra submits that both the learned Courts below have rendered concurrent findings of fact on proper appreciation of evidence on record which calls for no interference. It is submitted that both the learned Courts below have rightly discarded the document 'mark L'. Jamabandies on record reveals joint ownership of Dewa Singh and the defendant. Therefore, the alleged so called family settlement was never acted upon. Reference is made to the previous statements Ex.P-6 and Ex.P-8 of DW-1-Tara Singh to the extent that there was no partition between his grandfather-Labh Singh and Dewa Singh. It is thus prayed that this appeal be dismissed and the judgments and decrees passed by the learned Courts below be upheld.

I have heard learned counsel for the parties and have gone

through the file with their able assistance.

The substantial question of law which arises in this appeal for adjudication is “whether there has been a gross misreading of evidence, leading to a perverse finding inasmuch as the effect or otherwise of the sale deeds dated 20.11.1978 and 24.01.1979 besides decision dated 26.5.1984 and 23.10.1986 of the civil suit (which culminated in decision dated 13.07.2014 in RSA No. 149 of 1987) was not considered by the learned Courts below?”

It is not in dispute that Dewa Singh and Labh Singh i.e. father of Dasondha Singh were real brothers. Dewa Singh died issue-less on 13.12.1979. Dewa Singh and Labh Singh were joint owners of the property in question comprised in khasra no. 16149/810 and 16150/811 to the extent of half share each. Plaintiff-respondents i.e. sons of Mangal Singh claimed that half share of Dewa Singh devolved upon Mangal Singh and further upon them by way of will dated 09.05.1973. It is not in dispute that sons of defendant-Dasondha Singh filed Civil Suit No. 104/81, in May 1981 against the plaintiffs i.e. sons of Mangal Singh along with daughters and widow of Mangal Singh besides the defendant-appellant-Dasondha Singh, claiming possession of the suit property which included the suit property in the present proceedings as well. They based their claim on the sale deeds dated 20.11.1978 and 24.01.1979. Dasondha Singh did not file any written statement in the said proceedings, practically admitting their claim. Their (sons of Dasondha Singh) suit was decreed on 26.05.1984 which was duly proved on record as Ex.D-2. Appeal preferred by the plaintiffs was dismissed by the learned Additional District Judge, Hoshiarpur on

23.10.1986.

Learned counsel for the respondent-plaintiffs is unable to deny that RSA No. 149 of 1987 preferred by the plaintiffs against the judgments and decrees dated 26.05.1984 and 23.10.1986, was dismissed by this Court on 03.07.2014. It is conclusively held in the said proceedings that Dewa Singh executed the said sale deeds in favour of the sons of defendant-Dasondha Singh. Mutation of the said land and subsequent entries in the jamabandies were clearly negated. Present suit was filed by the plaintiff-respondents subsequent to the suit preferred by the sons of Dasondha Singh.

In this view of the matter, there is merit in the argument raised by learned counsel for the appellant that in-fact there is no question of any partition of the property in question, which in-fact stands sold to the sons of the defendant. Keeping in view judgment and decree dated 26.05.1984, which has been upheld by this Court in RSA No. 149 of 1987 on 03.07.014 and is informed to have attained finality, findings returned by both the learned Courts below while decreeing the suit filed by the plaintiff-respondents are clearly unjustified. The question of law is answered in favour of the appellant. Both the judgments and decrees dated 13.02.1985 and 31.07.1987, respectively passed by learned Sub-Judge Ist Class, Dasuya and learned Additional District Judge, Hoshiarpur, are accordingly set aside. Consequently, suit filed by the plaintiff-respondents is dismissed throughout.

Accordingly, this appeal is allowed.

18.12.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.