

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of Decision: March 08, 2018

1. RSA No.1267 of 2002 (O&M)

Jamiat Singh

...Appellant

Versus

Rattan Singh

...Respondent

2. CRM-M No.12768 of 2008 (O&M)

Chanan Singh & another

...Petitioners

Versus

State of Punjab & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.M.K.Garg, Advocate,  
for the appellant in RSA No.1267 of 2002 &  
for respondent No.2 in CRM-M No.12768 of 2008.

Mr.Ashok Singla, Advocate &  
Mr.Aakash Singla, Advocate,  
for the respondent in RSA No.1267 of 2002.

Mr.Rajesh Bhateja, Advocate,  
for the petitioners in CRM-M No.12768 of 2008.

Ms.Devaki Anand Sullar, AAG, Punjab,  
for the State in CRM-M No.12768 of 2008.

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**AMIT RAWAL, J. (Oral)**

This order of mine shall dispose of RSA No.1267 of 2002 preferred against the judgment and decree of the trial Court dated 21.1.1993, whereby the suit of the respondent-plaintiff for declaration and permanent injunction in respect of land measuring 1 kanal 10 marlas out of Khasra Nos.107//3/2 (1-10), 4 (8-0), 8/1/2 (2-0) 8/1/3 (0-17), total 12 kanals

7 marlas with consequential relief of permanent injunction restraining the appellant-defendant from interfering and dispossessing the plaintiff illegally and forcibly and judgment and decree dated 19.11.2001, whereby the appeal preferred by the appellant-defendant (now represented by legal representatives) has been dismissed.

CRM-M No.12768 of 2008 is at the instance of Chanan Singh and Darshan Singh sons of Rattan Singh, who was plaintiff in the civil suit, against State of Punjab and Rajinder Singh, the complainant, i.e., defendant in the civil suit for quashing of FIR No.76 dated 16.6.2007, under Sections 339/447/506/34 IPC registered at Police Station Mehna, District Mogra.

For the purpose of adjudication of Regular Second Appeal, it is noticed that Rattan Singh (since deceased) being represented by Chanan Singh and Darshan Singh, the legal heirs, instituted the suit for declaration and consequential relief that Rattan Singh and Jamiat Singh (since deceased) being represented by L.Rs were brothers and had been in possession of the land bearing Khasra Nos.107//3/2 (1-10), 4 (8-0), 8/1/2 (2-0), 8/1/3 (0-17) as entered in the jamabandi for the year 1986-87, situated in the estate of village Rauli, Tehsil Moga, District Faridkot on the premise that the defendant had denied the title of the ownership as well as the possession of the plaintiff. Owing to the threat perception, injunction was sought. It was submitted that the plaintiff had purchased the land, as noticed above, through the sale deeds.

The aforementioned suit was contested by the appellant-defendant by taking customary pleas of maintainability of the suit, locus-standi and valuation. On merits, it was stated that both the brothers had purchased the respective land from Mukhtiar Singh, the vendor. In fact, the

appellant-defendant had purchased the land measuring 1 kanal 8 marlas vide two sale deeds dated 14.1.1966 and 5.6.1981 (Ex.D1 and Ex.D3) bearing Khasra Nos.107/7 (8-0), 107/5/1 (4-0), 107/7/1 (6-2) and 107/8/1/1 (1-8). A prayer was also sought for staying the suit under Section 10 of the Civil Procedure Code owing to the suit filed by the defendant as plaintiff.

The trial Court, on the basis of the pleadings of the parties, framed the following issues and additional issues:-

- 1) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- 2) Whether the suit is liable to be stayed under Section 10 CPC? OPD
- 3) Whether the plaintiff is the owner in possession of the suit land? OPP
- 4) Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed? OPD

**Additional Issues**

- 3-A Whether there is a passage in the suit land leading to the land of the defendant? If so, its effect? OPD
- 5) Relief.”

The plaintiff, in support of his case, appeared himself as PW1 and also examined Gulzara Singh (PW-2) and closed the evidence after tendering into evidence copies of khasra girdawari Ex.P9 and jamabandi Ex.P10, whereas the defendant examined Balbir Singh as DW-1, Ram Sarup, DW-2, Darshan Singh DW-3, Sohan Singh DW-4, Lachhman Singh DW-5, Ajaib Singh DW-6 and himself appeared as DW-7 and closed the evidence after tendering into evidence documents Ex.D1 to Ex.D19.

The trial Court, on the basis of the aforementioned evidence, decreed the suit and the appeal preferred before the Lower Appellate Court

also met with the same fate.

Mr.M.K.Garg, learned counsel appearing for the L.Rs of Jamiat Singh, appellant-defendant in the Regular Second Appeal, submitted that the controversy with regard to the suit property had already been laid to rest in Regular Second Appeal No.670 of 2012 (Santokh Kaur and others Versus Chanan Singh and others), decided on 12.12.2014, whereby it was shown that the defendants therein and the plaintiff herein were found in excess possession of 6½ marlas of land, which was decreed by this Court. The Special Leave to Appeal (C) No.13592 of 2015 preferred against the aforementioned judgment had been dismissed vide order dated 9.2.2018. On merits, he submitted that both the Courts below committed illegality in not referring to the sale deeds dated 14.1.1966 (Ex.D1) and 5.6.1981 (Ex.D3), wherein there is a specific recital of possession.

Mr.Garg further submitted that the defendant gave the description of the property, which has not been looked into in correct perspective. In fact, Khasra No.8/1 was trifurcated into three parts, i.e., 8/1/1, 8/1/2 and 8/1/3. The appellant-defendant is owner of 8/1/1, whereas the respondent-plaintiff is owner of 8/1/2 and 8/1/3. There was, thus, no parcel of the land at the time of subject matter of the mutation. Both the Courts erred in not giving due weightage to the sale deeds Ex.D1 and Ex.D3. Reference to the jamabandies Ex.P6 for the years 1981-82 and 1986-87 is a misdirection and, thus, urged this Court for setting-aside the judgments and decrees rendered by both the Courts below.

Mr.Ashok Singla, learned counsel representing the respondent-plaintiff submitted that the judgment rendered in **Santokh Kaur's case (supra)**, rather helps the case of the respondent-plaintiff as the excess

portion in possession of the adverse party in the aforementioned Regular Second Appeal had been given back to the appellant herein and plaintiff therein.

As far as the judgments and decrees under challenge are concerned, the same have accorded the status of ownership strictly as per the contents of the sale deeds as the respondent-plaintiff is not staking any claim of ownership of suit land, i.e., Khasra No.8/1/1 and, thus, urged this Court for upholding the findings as there is no illegality or perversity.

**CRM-M No.12768 of 2008**

Mr.Rajesh Bhateja, learned counsel appearing on behalf of the petitioner in CRM-M No.12768 of 2008 submitted that as a fallout of the pendency of the suit, Rajinder Singh son of Jamiat Singh, appellant in the Regular Second Appeal and defendant in the civil suit lodged an FIR bearing No.76 dated 16.6.2007, under Sections 339, 447, 506 and 34 IPC registered at Police Station, Mehna, District Moga on the ground that alleged encroachment was done by the petitioners sons of Rattan Singh. The aforementioned FIR would not have been registered, for, the civil suit was already pending with regard to the determination of the ownership and injunction. This Court, vide order dated 19.5.2008, while issuing notice of motion, stayed further proceedings of the FIR owing to the fact that the civil suit between the parties was pending adjudication and thereafter ordered the Criminal Misc.Petition to be listed. It is in this backdrop of the matter, the Criminal Misc.Petition is being taken up for hearing.

He further submitted that the registration of the FIR is a gross abuse of process of law as it was purely a civil dispute and both the Courts had already rendered a finding of fact and law in Civil Suit No. 167 of

11.4.1989 titled as “Rattan Singh Versus Jamiat Singh”. Both have died and are being represented by legal representatives, i.e., the petitioners being sons of Rattan Singh and claimant Rajinder Singh son of Jamiat Singh.

Mr.M.K.Garg, learned counsel for complainant Rajinder Singh submitted that the FIR cannot be sought to be quashed, for, if a person commits a crime, it cannot be claimed that the decision of the suit is only for according the status of ownership and it is only the criminal court which can punish the accused, who is alleged to have committed the offence as per the provisions of the Act.

In the present appeal, there was a status-quo order regarding user of the passage in the meantime, but since the petitioners were interfering resulting into commission of an offence, rightly so, the police after ascertaining the truth in the complaint, registered the FIR and filed the report under Section 173 of the Code of Criminal Procedure, though the petitioners have been admitted to bail.

Ms.Devaki Anand Sullar, AAG, Punjab, for the State in CRM-M No.12768 of 2008 submitted that the police had registered the FIR after investigation of the matter and preparation of the site plan Ex.R1 and found that the passage was in existence. In other words, the FIR was registered on the basis of the enquiry. Regarding the decretal of the suit at the instance of Rattan Singh, father of the petitioners in CRM-M No.12768 of 2008 and dismissal of the appeal by Jamiat Singh, the father of the complainant, has not been controverted.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the contentions of Mr.Garg raised with regard to the appeal as both the sale

deeds dated 22.3.1965 and 12.12.1979 pertaining to the khasra numbers, as mentioned above, in respect of land measuring 12 kanals 7 marlas, the plaintiff had only sought the declaration vis-a-vis khasra number mentioned therein and not with regard to Khasra No.8/1/1, i.e., the suit property.

The judgment dated 12.12.2014 given by this Court in RSA No.670 of 2012 rather helps the case of the respondent-plaintiff and goes against the appellant-defendant, for, any appeal preferred by the appellant-defendant as a plaintiff which has reached to this Court in RSA No.670 of 2012 on the basis of the report of the revenue official, it was found that there was an encroachment of an area of 6½ marlas, which was in unauthorised possession of the defendant of Khasra No.8/1/1, which has already been ordered to be handed over to the plaintiff and the order has been complied with. The SLP filed against the same has also been dismissed.

There is another aspect of the matter. The entire pith and substance of the argument of Mr.Garg has been if the appellant-defendant has any grievance, he would have filed a counter claim. In the absence of the counter claim, this Court is not able to adjudicate. Since the grievance has not been submitted, I am of the view that the order dated 12.12.2014 passed in RSA No.670 of 2012 is not complied with, but the fact of the matter is that the declaration granted by the Court to the respondent-plaintiff is strictly as per the terms and conditions of the sale deeds and not beyond that. I do not intend to differ with the concurrent findings, much less the argument of Mr.Garg is not able to make out a case for forming a different opinion than the one arrived at. Resultantly, the appeal is dismissed.

Coming to the quashing petition. There is no concrete evidence

noticed by the police authorities with regard to the encroachment. It was just a bald statement made by the complainant of alleged blockage by the petitioners or violation of the status quo order. In my view, the registration of the FIR is a counter blast to the dismissal of the appeal against the decretal of the suit and the fact of the matter is that the complainant had already got possession of the same. He was nursing a grudge against the petitioners. Such type of practice cannot be allowed to continue as it is a gross abuse of the powers.

While exercising the inherent powers under Section 482 of the Code of Criminal Procedure, this Court can always, in such circumstances, by taking into consideration the facts of the FIR, quash the same. The stand taken has not been able to substantiate the allegations made in the FIR.

For the reasons stated above, the FIR, in my view, is a counter blast to the pendency of the civil suit, much less having lost litigation before the Courts below.

Since I have already upheld the judgments and decrees of the Courts below, whereby the suit preferred by the respondent-plaintiff had been decreed, there cannot be any violation of the status order. Resultantly, the FIR stands quashed and the CRM-M No.12768 of 2008 stands allowed.

**March 08, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**