

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 17.2.2018

RSA No. 2674 of 2008 (O/M)

Mehma Singh

..... Appellant

Versus

Bhagwant Kaur and others

..... Respondents

RSA No. 2889 of 2008 (O/M)

Mehma Singh

..... Appellant

Versus

Bhagwant Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Ashna Gill, Advocate, for,
Mr. Aman Pal, Advocate, for appellant in both cases.

Mr. Gurcharan Dass, Advocate,
for respondents No. 1 to 4 in both cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

By this single judgment, I will dispose of abovenoted two connected Regular Second Appeals i.e. RSA-2674-2008 and RSA-2889-2008, filed against judgment dated 9.5.2008, passed by learned Additional District Judge, Rupnagar, vide which while disposing of two connected appeals, arising out of same judgment and decree dated 6.9.2004, passed by learned Civil Judge (Junior Division), Kharar, in two consolidated suits, titled as *Charan Singh Versus Mehma Singh and others* and *Mehma Singh Versus Charan Singh*, was set aside and suit filed by Charan Singh through his LRs was decreed. Civil Suit No. 310, filed by

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Mehma Singh against Charan Singh was dismissed and the suit filed by Charan Singh against Mehma Singh i.e. Civil Suit No. 327, was decreed and following decree was passed :-

“26. the suit of the appellant bearing No. 327, dated 8.9.97 is decreed to the effect that if

the appellant deposits Rs. 41500/- in the Court within 3 months from today and serves a notice thereof to the respondent Mehma Singh, then the respondent Mehma Singh will execute a registered sale deed within one month thereafter of the disputed place, i.e., the place purchased by him vide sale deed dated 29.7.1997. The expenses of the sale deed will be incurred by the appellant. If the appellant fails to deposit the above said amount within the stipulated period, then, these appeals shall stand dismissed. But, if the appellant complies with the above said conditions and the respondent Mehma Singh fails to get the sale deed registered with the stipulated period, then, the appellant will be free to have the sale deed registered by executing this decree. File of this court be consigned to the Record Room and that of the learned Lower Court be returned to that learned Lower Court with a copy of this judgment.”

Brief facts of the case as made out from both the cases are that Puran Singh, was original owner of bara No. 118, measuring 5 marlas. In

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his Civil Suit No. 327 dated 8.9.1997, filed by Charan Singh, it was stated that he is only son of Puran Singh. Puran Singh and Charan Singh were residing together. Puran Singh left behind plaintiff Charan Singh and four daughters, namely, Inder Kaur, Jeeto, Angrej Kaur and Pushpinder Kaur. All the daughters are married. Puran Singh had executed a Will dated 3.1.1969 in favour of plaintiff. Puran Singh died on 6.3.1969. Plaintiff constructed a house not on bara No. 117, but on bara No. 118 also during lifetime of Puran Singh. There is a boundary wall on bara No. 117 and 118. Plaintiff did not approach revenue authorities for mutation. He was having litigation with Mehma Singh (defendant) since 1976, who in connivance with sisters Angrej Kaur and Pushpinder Kaur had purchased 2 marlas from them, vide sale deed dated 29.7.1997 for Rs. 41500/-. Charan Singh has filed a suit for declaration that said sale deed is null and void and plaintiff be declared sole owner in possession after death of Puran Singh on the basis of Will dated 3.1.1969. He further claimed that he is in adverse possession of said bara for last 12 years and has become owner of bara No. 118. It was further claimed that plaintiff has got preferential rights over said bara No. 118. It was claimed that only Rs. 20000/- were paid and exaggerated amount of Rs. 41500/- was mentioned in the sale deed. Plaintiff Charan Singh is ready to pay the said amount.

The suit was contested by defendant Mehma Singh etc. on the ground that bara No. 118 was allotted to Jatti, father of Puran Singh during consolidation being agricultural labourer and was being used as subservient to agriculture. The Will dated 3.1.1969 was denied and it is stated that same has not seen the light of day till filing of suit. The sisters of plaintiff are co-sharers and were in joint possession. He stated that he has purchased

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2 marlas out of bara No. 118 from defendants No. 7 and 8 i.e. Angrej Kaur and Pushpinder Kaur for Rs. 41500/-, vide sale deed dated 29.7.1997 and is in joint possession as co owner.

In the suit filed by Mehma Singh, he made a prayer for separate possession by way of partition of said property. In suit of Mehma Singh, he took the same plea as taken in written statement filed in the suit filed by Charan Singh. The suit filed by Charan Singh shall hereinafter be called as first suit and suit filed by Mehma Singh shall be referred to as second suit.

In the first suit, following issues were framed :-

1. Whether Puran Singh executed a Will dated 3.1.1969 in favour of the plaintiff ? OPP
2. Whether the plaintiff is entitled to the declaration as prayed ? OPP
3. Whether the sale deed dated 29.7.97 is illegal and void ? OPP
4. In the alternative whether the plaintiff is entitled to possession as prayed ? OPP
5. Whether the plaintiff is entitled to the Permanent Injunction as prayed for ? OPP
6. Relief.

In the second suit, following issues were framed :-

1. Whether the plaintiff is entitled to Separate possession as prayed for ? OPP
2. Relief.

The trial Court disbelieved the Will set up by plaintiff in the first suit. The adverse possession was also disbelieved. However, the trial Court took the view that under Section 22 of The Hindu Succession Act,

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1956, plaintiff has got preferential right to the property, sold by defendants No. 7 and 8 as same is subservient to agriculture land. Consequently, first suit filed by Charan Singh was dismissed and that of Mehma Singh was decreed for separate possession of plot measuring 0-2 marlas out of 0-5 marlas in bara No. 118 by way of partition. Defendants were restrained from raising any construction in aforesaid plot till it is partitioned amongst the co sharers.

In the cross appeals, filed before the lower appellate court, the judgment was reversed and first suit filed by Charan Singh was decreed and that of second suit filed by Mehma Singh was dismissed, as discussed above.

I have heard the learned counsels for parties and have also carefully gone through the file.

The learned proxy counsel appearing for learned counsel for appellant in both cases in the second suit filed by Mehma Singh has not challenged the other findings recorded by lower appellate Court on merits and has confined her arguments to the application of Section 22 of The Hindu Succession Act, 1956, and has claimed that since bara No. 118 is subservient to agriculture land, therefore, in the first suit, Charan Singh does not have preferential right as co owner to purchase immoveable property.

It is necessary to reproduce Section 22 of The Hindu Succession Act :-

“22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of

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the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, “Court” means the Court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other Court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

The learned counsel for appellant Mehma Singh has argued that though in the said second suit, words 'interest in any immovable property' is used, but that would not mean that it is not applicable to property which is subservient to agriculture purposes. Reliance has been placed upon the authority of Apex Court in *Balak Ram Versus State of Punjab*, 2001 (4) RCR (Civil) 811, wherein it was held that property described as “Gair Mumkin Bara” does not cease to be agricultural land on the mere nicety that land not actually shown to be put to plough. Therefore, it is to be pressed that words 'immovable property' has to be qualified as a property which is not subservient to agriculture purposes. It will be a question of fact in each case whether the property is subservient to agricultural purposes ?

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In the plaint in the first suit, Charan Singh had claimed that he had raised construction over bara No. 117 and bara No. 118 and constructed a house therein. The copies of jamabandis produced before the lower Court from the year 1904 upto 1984-85 shows that land bearing khasra No. 118 was mentioned as Gair Mumkin Bara. It was owned by Charan Singh and his four sisters. For the first time in the jamabandi for the year 1989-90, it was mentioned as Gair Mumkin house. Same entry was reported in jamabandi for the year 1994-95 which means that when property was sold by Angrej Kaur and Pushpinder Kaur (defendants No. 7 and 8) through sale deed dated 29.7.1997, it was recorded as Gair Mumkin house. Even in the pleadings, plaintiff has asserted that he has constructed a house in bara No. 118. Therefore, land bearing khasra No. 118 was no more a bara and it was a Gair Mumkin house. It being so, it being subservient to agricultural purposes does not arise. Further, it comes out that as per case of defendants, bara was originally allotted to Jatti Ram being a landless labourer. Respondents have placed on file copies of proceedings of Istemal in which it was decided to allot a bara to landless labourers of the village.

The learned counsel for respondents No. 1 to 4 has relied upon Section 10 of The Punjab Village Common Lands (Regulation) Act, 1953, which empowers the allotment of land free of charges. The said purposes are mentioned in Punjab Village Common Lands (Regulation) Rules, 1955. Under Clause 7(d), one of said purpose is residential purposes to the Scheduled and Backward Classes. Plaintiff is stated to be belonging to scheduled caste category.

The learned counsel for respondents No. 1 to 4 has also relied upon Punjab Village Common Lands (Regulation) Rules, 1964, in which

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Rule 13- A was inserted as under :-

“Rule 13-A. Giving of the land to landless worker – A panchayat may with previous approval of the government give land in shamilat deh free of cost of a landless worker residing in the Sabha area for construction of a house for his residence.

Provided that the landless worker to whom such land is given shall not be entitled to sell, exchange or mortgage it except mortgaging it for the purpose of raising loan to construct a house on it.”

The said rule prohibits the sale, exchange or mortgage of land which was allotted for the purpose of construction of house in the shamilat deh free of cost to the landless labourers.

In any case, it is found that said land bearing khasra No. 118 is not subservient to agriculture purposes. Therefore, it was to be succeeded as per natural succession and in terms of Section 22 of The Hindu Succession Act, 1956. Plaintiff had preferential right to acquire interest proposed to be transferred. It being so, no fault can be found with the judgment passed by lower appellate Court. Consequently, both appeals are found to be without any merit and are hereby dismissed, leaving the parties to bear their own costs.

(KULDIP SINGH)
JUDGE

17.2.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No