

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

RSA No.2124 of 2009(O&M)

Date of decision:17.7.2018

Rajinder Kumar and others

.....Appellants

VERSUS

Ananti Devi through her LR and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Aggarwal, Advocate for the appellants.

Mr. R.S. Chauhan, Advocate for the respondents.

REKHA MITTAL, J.

The present appeal directs challenge against the judgment and decree dated 30.01.2009 passed by the Additional District Judge, (Adhoc) Fast Track Court, Gurdaspur whereby appeal filed by unsuccessful defendant Ananti Devi was partly allowed, judgment and decree dated 19.04.2003 regarding share of Ananti Devi was set aside.

The appellants/plaintiff claimed himself to be owner in possession of land measuring 31 kanal 11 marlas on the basis of sale deed dated 31.03.1967 executed by Chain Singh – defendant No.2. Out of land measuring 31 kanal 11 marlas, the appellant sold land measuring 11 kanal 19 marlas in favour of Sh. Bua Ditta Mal and Isha Din vide two different sale deeds and possession thereof was delivered to the vendees. The appellant claimed himself to be in possession of remaining land measuring 19 kanal 12 marlas being its owner on the basis of aforesaid sale deed.

Chain Singh –defendant No.2 did not contest the suit. However, Smt. Ananti Devi, sister of Chain Singh contested claim of the appellant qua his ownership of land measuring 31 kanal 11 marlas on the premise that she is co-owner of the said land to the extent of half share on the basis of inheritance to Sh. Hari Singh, father of the defendants and erstwhile owner of the land.

The trial Court decreed suit of the appellant by holding that appellant is the exclusive owner in possession of land bearing khewat No. 203, khatauni No.335, killas No.65R/12, 13/1, 18/2, 18/3, 19/1 and 19/2 measuring 19 kanal 12 marlas vide jamabandi for the year 1992-93 situated in revenue estate of village Mutfarka, Tehsil Pathankot having purchased the same vide registered sale deed dated 31.03.1967 and the defendants have no right, title or concern with the same and entries showing the defendants as co-sharers in column No.4 of the Jamabandi are wrong, illegal and null and void. As a consequential relief, a decree of permanent injunction was granted restraining the defendants from interfering in any manner in peaceful possession of the plaintiff as owner and also from selling, mortgaging or alienating in any manner any part of the suit land. As has been noticed hereinbefore, the appeal preferred by Ananti Devi – respondent No.1 was partly allowed and the judgment and decree passed by the trial Court were set aside qua share of Ananti Devi.

Counsel for the appellants [legal heirs of Rattan Chand, plaintiff (since deceased)] would argue that as Ananti Devi till date has not challenged correctness and validity of sale deed dated 31.03.1967 and did not file a counter claim in the present proceedings, sale deed dated 31.03.1967 executed by Sh. Chain Singh would hold good for all intents

and purposes in order to confer ownership rights upon the appellants in respect of land measuring 31 kanal 11 marlas, subject matter of the said sale deed. It is further argued that the appellant/plaintiff has already sold land measuring 11 kanal 19 marlas out of 31 kanal 11 marlas and possession of sold land was delivered to its vendees. The appellant/plaintiff is in possession of remaining land measuring 19 kanal 12 marlas on the basis of sale deed executed 50 years ago, therefore, the respondents/defendants have no right to interfere in his peaceful possession or dispossess him forcibly and illegally.

Counsel representing respondent No.1 has supported the judgment passed by the Court in appeal so far as setting aside the judgment and decree passed by the trial Court qua share of Ananti Devi. It is vehemently argued that as per the Jamabandi for the year 1962-63 Ex.P5, the suit land was previously recorded to be ownership of Hari Singh, admittedly, father of Ananti Devi and Chain Singh. On death of Hari Singh, suit land was inherited by his class-I heirs on the basis of natural succession and accordingly Ananti Devi became co-owner of the suit land to the extent of 50% i.e. 15 kanal and 15½ marlas. According to counsel, as Chain Singh was a co-owner of land measuring 31 kanal 11 marlas only to the extent of half share, he could not sell land more than his share nor sale by him more than his share can bestow a valid title in favour of the appellant. Further submitted that as the appellant can claim ownership only to the extent of half share in land measuring 31 kanal 11 marlas out of which he has already sold land measuring 11 kanal 19 marlas in favour of Sh. Bua Ditta Mal and Isha Din, appellant is left with ownership of less

than 4 kanals of land and he is not entitled to alienate land more than his share, in favour of a third person.

I have heard counsel for the parties, perused the paper-book and records.

Counsel for the appellants has not disputed entries in the revenue record with regard to land measuring 31 kanal 11 marlas being previously owned by Sh. Hari Singh, father of the defendants. The appellant/plaintiff himself has placed on record copy of mutation No.1012 qua inheritance of Sh. Hari Singh. As per Ex.P6, Hari Singh died in February 1965 and mutation qua inheritance was sanctioned on 17.06.1967 to the extent of half share each in favour of Chain Singh and Ananti Devi, on the basis of natural succession. As per the settled position in law, inheritance never remains in abeyance. There is no material available on record that Chain Singh became exclusive owner of land previously owned by his father Sh. Hari Singh. On the contrary, mutation Ex.P6 substantiates plea of respondent No.1 that she became co-owner of suit land to the extent of half share.

Rattan Chand, predecessor in interest of the appellants, filed the suit seeking declaration that he is owner in exclusive possession of suit land. Since Chain Singh was co-owner of the suit land to the extent of half share, he was not competent to alienate land more than his share nor could transfer any rights better than he himself had. The trial Court misdirected itself by declaring the appellant to be owner of land measuring 19 kanal 12 marlas after sale of land measuring 11 kanal 19 marlas by him out of land measuring 31 kanal 11 marlas. As a matter of fact, the appellant became co-owner in land measuring 31 kanal 11 marlas to the extent of half share

on the basis of sale deed dated 31.03.1967 executed by Sh. Chain Singh. After sale of land measuring 11 kanal 19 marlas, he is left with ownership of land less than 4 kanal out of total land measuring 31 kanal 11 marlas as the remaining land measuring 15 kanal and 15½ marlas would be ownership of Smt. Ananti Devi. However, as the appellant now represented by his LRs is proved to be in possession of land measuring 19 kanal 12 marlas after sale of land measuring 11 kanal 19 marlas to its vendees, respondents are restrained from dispossessing the appellant from said land except in due course of law. The appellant shall not be entitled to alienate remaining land measuring 19 kanal 12 marlas more than their share to the extent of 1/2 share out of total land. As such, respondent No.1 shall not be entitled to alienate land more than 15 kanal and 15½ marlas of land to the extent of half share out of total land measuring 31 kanal 11 marlas.

For the foregoing reasons, the appeal stands disposed of with the aforesaid observations, leaving the parties to bear their own costs.

JULY 17, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no