

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

RSA No.1999 of 2011 (O&M)

Date of Decision.09.03.2018

Paramjit Singh and another

.....Appellants

Vs

Kartar Kaur and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.D. Sharma, Senior Advocate with
Mr. Ved Priya Malik, Advocate
for the appellants.

Mr. Gurcharan Dass, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in regular second appeal against the judgment and decree dated 19.08.2006 rendered by the Civil Judge (Jr. Divn) Dhuri whereby the suit for declaration and permanent injunction has been dismissed and the appeal preferred against the same before the lower Appellate Court has also been dismissed vide judgment and decree dated 09.02.2011.

The plaintiff-Baldev Singh (since deceased) instituted the suit claiming ownership and possession of half share in the total land measuring 96 bighas 12 biswas with consequential relief of injunction against defendant No.1-Kartar Kaur, who is none else but his sister on the premise that he is owner to the extent of half share in the aforementioned land as depicted in the revenue record since 1969-70 to 1995-96. It is averred that Giany Singh owner of the aforementioned land died on 05.07.1954 whereas Nihal Kaur pre-deceased him in the year 1950. Giany had two children

was mutated half share each in the name of Baldev Singh and Kartar Kaur. However, Kartar Kaur moved an application before the Collector and the Collector vide order dated 15.07.2001 issued a Fard Badar correcting the jamabandies. It is in that background of the matter, the cause of action accrued to the appellant-plaintiff claiming the possession, which is/was open, hostile, continuous, uninterrupted to the knowledge of the whole world as certain improvements by spending lakhs of rupees had been made.

The suit aforementioned was contested by the defendants No.1 to 4 and 7 & 8 by filing joint written statements. It was submitted that the factum of the ownership of the land by Gianj was not denied but it was stated that possession of the plaintiff over the suit property was deemed to be in possession of all the co-owners but not his exclusive possession. The revenue authorities corrected the entries as Baldev Singh died intestate leaving behind two legal heirs.

The trial Court on the basis of the aforementioned pleadings framed the following issues:-

- “1. Whether the plaintiff is co-owner and in possession of ½ share of land measuring 96 bighas 12 biswas? OPP*
- 2. Whether order dated 15.07.2001 passed by the Collector Dhuri, is null and void, ineffective and is liable to be set aside? OPP*
- 3. Whether the plaintiff is entitled to decree of declaration as prayed for? OPP*
- 4. Whether the plaintiff is entitled to decree of permanent injunction? OPP*
- 5. Whether the plaintiff has become owner of the property in*

dispute by way of adverse possession? OPP

6. Whether the plaintiff has filed the present suit by making false and mis-leading? OPD

7. Relief.”

In support of his case, the plaintiff examined himself and testified in terms of the pleadings whereas the defendant examined as many as six witnesses and brought on record the documents Ex.D1 to D4.

The trial Court on the preponderance of evidence dismissed the suit and the appeal preferred against the same before the lower Appellate Court also met with the same fate.

Mr. S.D. Sharma, learned senior counsel assisted by Mr. Ved Priya Malik representing the appellant-plaintiff in support of grounds of appeal submitted that at the time of death of Giany on 05.07.1954, the Hindu Succession Act, 1956 was not applicable but custom prevailed, thus, the entire land devolved upon his son, Baldev Singh, for, the aforementioned Act came into force only on 17.06.1956, therefore, provisions of Section 8 of the Hindu Succession Act were not applicable.

The Collector could not have passed the order issuing the Fard Badar in causing correction of revenue entry to the extent of half share in favour of each of the sibling i.e. Baldev Singh and Kartar Kaur. The possession of the plaintiff had been continuous and well known. Assuming for the sake of argument that status of Kartar Kaur was of a co-sharer but the plea of adverse possession can always be set up against the co-sharer in case the co-sharer does not raise any objection with regard to improvements. This proposition of law has already been laid down by the Hon'ble Supreme Court, thus, the Courts below committed illegality and perversity in not

noticing the aforementioned fact and therefore, the judgments and decrees under challenge are liable to be set aside.

Per contra, Mr. Gurcharan Dass, learned counsel appearing on behalf of the respondents-defendants submitted that way back since 1964 i.e. after demise of Giany, father of Baldev Singh and Kartar Kaur, the status of the property continued to be reflected in the jamabandi to the extent of half share in favour of Baldev Singh and Kartar Kaur, though the possession was with the plaintiff, thus, for all intents and purposes the possession in favour of any co-owner would be on the part of all the co-owners. The order of the Collector acknowledging the aforementioned status as recorded in the mutation. The plaintiff could not claim the entire ownership of the property in the absence of proof of custom, thus, urges this Court for upholding the concurrent finding rendered by the Courts below:-

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Sharma, for, Baldev Singh and Kartar Kaur admittedly were brother and sister, born out of loins of Giany and Nihal Kaur. The mutation sanctioned on 02.04.1965 to the extent of half share in favour of Baldev Singh and Kartar Kaur had not been denied or challenged by Baldev Singh during all this period when correction in the jamabandi came to be passed vide order of the Collector dated 15.07.2001. The plaintiff has not been able to prove on record any custom with regard to succession to the estate of his father. Therefore, as a natural corollary the property was reflected in half share each which was equal distribution in law. I am of the view that the equity also tilted in favour of Kartar Kaur, thus, the aforementioned submissions of Mr. Sharma are not able to cut ice and hereby rejected.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination before this Court. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 09, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No