

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

Date of decision: 17.01.2018

1. RSA No.4521 of 2012 (O&M)

Badal Singh and another

.....Appellants

Versus

Chabilla and others

.....Respondents

2. RSA No.1264 of 2013 (O&M)

Badal Singh and another

.....Appellants

Versus

Davender and others

.....Respondents

3. RSA No.1266 of 2013 (O&M)

Badal Singh and another

.....Appellants

Versus

Basti Ram and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. R.K. Verma, Advocate,
for the appellant(s).**

Ritu Bahri, J.

CM No.12617-12618-C of 2012

**In view of the averments mentioned in the applications, same are
allowed and delay of filing and re-filing of the appeal is condoned.**

Main Appeals

This judgment shall dispose of RSA No.4521 of 2012, RSA

No.1264 of 2013 and RSA No.1266 of 2013 together as common questions

of law and facts are involved in all the appeals. For reference, facts are being taken from RSA No.4521 of 2012.

RSA No.4521 of 2012 has been filed against the judgment dated 05.05.2009 passed by the Additional District Judge, Hisar, whereby appeal filed by plaintiffs (appellants herein) against the judgment & decree dated 11.04.2008 passed by the Civil Judge (Junior Division), Hisar, has been dismissed and their suit has been dismissed.

Badal Singh and Raj Mohan-plaintiffs (appellants herein) filed the aforesaid suit for possession of 1/4th share of the land measuring 40 Kanals comprised in rectangle No.148, Killa No.20, 21, Rectangle No.153, Killa Nos. 1, 10, 11 and rectangle Nos.150, Killa No.25 min, situated at village Dobhi. They have further challenged the decree passed in civil suit No.174 dated 02.04.1991, titled as 'Chhabila vs. Jai Singh etc.' which was got suffered by defendant No.1 in his favour from defendant Nos.2 to 7 from the Court of then Sub Judge, Hisar on the grounds of fraud, misrepresentation of facts etc. They had also challenged mutation No.3082 dated 21.08.1991 sanctioned on the basis of the impugned decree in favour of defendant No.1. The plaintiffs have further challenged the sale deed No.3051 dated 19.07.1994 executed by defendant No.2 in favour of defendant No.8 qua some portion of the suit land comprised in rectangle No.150, Killa No.25/1 measuring 6 Kanals 2 Marlas and mutation No.4208 dated 25.01.1997 in favour of defendant No.8 on the basis of the said sale deed. By way of consequential relief, plaintiffs have sought injunction to the effect that defendant No.1 be restrained from further alienating the suit land to any other person. It was further stated that plaintiffs were sons of defendant No.2. Earlier, the suit land was owned by great grandfather of plaintiffs

namely Tulsi Ram and the same had been inherited by the father of plaintiffs by way of inheritance. As such, it was averred that the suit land was ancestral and co-parcenary property of the defendants Nos.2 to 7 and the plaintiffs and they had a pre existing right in the same. The plaintiffs further averred that defendant No.1 was in the cultivating possession of the land comprised in rectangle No.149, Killa Nos.21, rectangle No.150 Killa No.16, 25 and Rect. No.153, Killa Nos.3, 4, 7/2 and 8 min. Defendant No.1 had filed a suit for injunction against the present defendant Nos.2 to 7, who were owners of the land and therein, a compromise was entered into between the parties qua the suit and the land measuring 40 Kanals as detailed above, was given to defendant No.1. In lieu thereof, defendant No.1 had left his possessory right over the remaining land which was in his cultivating possession. A decree had been passed in civil suit No.174 dated 02.04.1991 by the then Sub Judge, Hisar on the basis of the compromise. The said decree was got suffered by present defendant No.1 in his favour on the basis of fraud and misrepresentation of the fact etc. The impugned decree and mutation No.3084 dated 21.08.1991 sanctioned on the basis of the said decree in favour of the defendant No.1 have been assailed by the plaintiffs. As per plaintiffs, they were minors at the time of passing of the impugned decree. Now, it was revealed that plaintiff No.1 had sold land measuring 5 Kanals 16 Marlas comprised in rect. No.150, Killa No.16 to defendant No.8 vide sale deed No.3052 dated 19.07.1974 and mutation No.4209 dated 21.01.1997 had also been sanctioned in favour of defendant No.8 on the basis of said sale deed. The defendants were requested to deliver possession of 1/4th share of the suit land to the plaintiffs, but to no avail. Hence, the suit.

Upon notice, defendant No.1 filed written statement taking preliminary objections with regard to locus standi, cause of action, non joinder of necessary parties, limitation etc. On merits, it was admitted that earlier Tulsi Ram was owner of the suit land. It was submitted that plaintiffs had no pre existing right in the suit property. Kheta Ram, great grandfather of defendant No.1 was tenant in the suit land on payment of 1/3rd *batai*. After his death, grandfather of defendant No.1 and thereafter, his father became tenant over the suit land. Some other land was also in the cultivating possession of Kheta Ram. Pursuant to the decision of civil suit No.174, suit land was given to defendant No.1 and he was declared owner of the same on the basis of settlement effected between the parties some days earlier from filing of that suit. As per the said compromise, defendant No.1 had left his possessory/tenancy right over the remaining land, which was owned by defendant Nos. 2 to 7. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

Defendant Nos. 2 to 7 failed to appear before the trial Court, therefore, they were proceeded against *exparte*.

Defendant No.8 filed separate written statement stating therein that he had purchased a portion of the suit land from defendant No.1 vide sale deed No.3052 dated 19.07.1994 and mutation in that regard, was also sanctioned in his favour on 25.01.1997. Defendant No.8 claimed himself to be a *bonafide* purchaser of the suit land.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs along with defendant No.2 are owner of 1/4th share of the suit land as detailed and described in the head

note of the plaint and the decree dated 02.04.1991 in case No.174 suffered by defendant Nos. 2 to 7 in favour of defendant No.1 and the mutation No.3082 dated 21.08.1991 sanctioned on the basis of above said decree in favour of defendant No.1 are wrong, illegal, null and void and liable to be set aside? OPP

1-A. Whether the sale deed No.3051 dated 19.07.2004 executed by defendant No.1 in favour of defendant No.8 and the mutation No.4208 dated 25.01.1997 is totally illegal, null and void and are liable to be set aside? OPP

2. If issue No.1 is proved, whether the plaintiffs are entitled to get the possession of the suit land along with defendant No.2? OPP
3. Whether If both issues are proved, whether the plaintiffs are entitled for permanent injunction restraining the defendants from alienating the suit land in any manner, whosoever? OPP
4. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit is bad under Order 23 Rule 3-A of CPC? OPD
7. Whether the suit is time barred? OPD
8. Whether the suit is bad on account of non joinder and mis joinder of necessary parties? OPD
9. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate. Both the Courts have returned concurrent finding of fact that plaintiffs had failed to prove their case. As far as sale deed No.3051 dated 19.07.1994, vide which land measuring 5 Kanals 16 Marlas was sold by defendant No.1 to defendant No.8 was concerned, it showed that the land belonged to Tulsi Ram and had been declared as surplus. Documents relied upon by the plaintiffs themselves revealed that the land comprised in rectangle No.150,

Killa No.16, measuring 5 Kanals 16 Marlas had been declared surplus by

the then SDO (Civil), Hisar vide order dated 26.02.1979. Since Tulsi Ram was no more the owner of this land, his successors in interest i.e. plaintiffs have also no locus or ownership over the suit land. They could not challenge the said sale deed (Ex.P6). Since the State had become owner of the land measuring 5 Kanals 16 Marlas, which was allegedly purchased by defendant No.8 from defendant No.1, it was the State or defendant No.8, who could challenge the said sale deed. Plaintiffs have no cause of action to file suit against defendant No.8. Accordingly, suit against defendant No.8 was dismissed.

As far as decree passed in civil suit No.174 dated 02.04.1991 in favour of defendant No.1 is concerned, defendant Nos.2 to 7 were still alive and none of them had stepped into the witness box to corroborate the plea of the plaintiff that any fraud or misrepresentation of the facts had been committed by defendant No.1 on them in getting the impugned decree passed in his favour. Plea of fraud and misrepresentation was available with defendant Nos.2 to 7 as they were parties to the suit and they could challenge the same. None of them had appeared into the witness box on behalf of plaintiffs to corroborate their plea. Hence, the plea of fraud and misrepresentation was also declined by the Courts below.

Further, the plaintiffs have alleged that the suit land was co-parcenary property and defendant Nos. 2 to 7 could not suffer a decree in favour of defendant No.1. To prove this fact, they have placed on record excerpt Ex.P8. However, during cross-examination, Ashok Kumar, Patwari (PW-2) stated that the said document had not been prepared by him. It was admitted that he had not gone through the record of Istemal and without going through the same, the old numbers allotted to his successors and it

could not be said that holdings of Tulsi Ram in the hands of Darbara Singh and others, were ancestral properties. Hence, in the absence of any evidence, plea of the plaintiffs that the suit land was ancestral, was rejected. A perusal of Ex.P8 revealed that Kheta Ram, predecessor-in-interest of defendant No.1, was in long possession over the suit property along with some other land as *Mujara* at least since the year 1919-20. There was continuity of possession of Kheta Ram and others. Hence, entire holding of Tulsi Ram was in possession of *Mujara*. Mother of plaintiffs appeared in the witness box as PW-1 and admitted that defendant No.1 and his ancestors were the tenants over the suit land and remaining land of Tulsi Ram since long. They used to give *batai* to the land owners. Keeping in view that they were in possession over the land of Tulsi Ram since the year 1919-20, both the Courts below have held that consent decree passed in civil suit No.174 of 02.04.1991 was an act of good management, as old tenants were given 40 Kanals of land and they gave up their possession over remaining land of Tulsi Ram. Hence, it was held that defendant Nos. 2 to 7 had suffered the aforesaid decree in favour of defendant No.1 as an act of good management. Keeping in view that possession of tenants was more than 100 years, possibility of acquiring occupancy rights over the same by defendant No.1 and his predecessors-in-interest could not be ruled out. This was made the basis for the consent decree. Accordingly, all the issues were decided against the plaintiffs and ultimately, the suit was dismissed.

After going through the impugned judgments, this Court is of the view that the Courts below have rightly given a finding that defendant No.1 had got the land of Tulsi Ram through his predecessor Kheta Ram. Their possession over the suit land was for the last more than 100 years. As an act

of good management, the consent decree was passed, thereby defendant No.1 had got 40 Kanals of land and in lieu of that he had given up his possessory rights in favour of defendant Nos.2 to 7. Moreover, defendant Nos.2 to 7 were alive and they never came forward to support the case of plaintiffs. In these circumstances, the suit of the plaintiffs has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, all the appeal i.e. RSA No.4521 of 2012, RSA No.1264 of 2013 and RSA No.1266 of 2013 are dismissed.

17.01.2018
ajp

(RITU BAHRI)
JUDGE

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