

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3045-2013 (O&M)
Date of decision: 12.01.2018

Rajinder Singh and others

.....Petitioners

versus

Bhajan Singh @ Harbhajan Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Shri G.S.Jaswal, Advocate for the appellants
Shri Tarundeep Kumar, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This regular second appeal is directed against the judgment dated 16.3.2013, passed by the learned Additional District Judge (Adhoc) Fast Track Court, Amritsar, affirming the judgment and decree dated 12.9.2011, passed by learned Additional Civil Judge (Senior Division), Amritsar, vide which, suit filed by the plaintiffs was decreed to the effect that plaintiffs were ordered to be recorded as owners qua land comprised in khasra no.30//25(7-3), 30//16 (3-16) min East and 30//15 (4-0) min East as per jamabandi for the year 2001-2002 by correcting the revenue record. A decree for permanent injunction was also passed restraining the defendants from alienating the suit property or from interfering into the possession of the plaintiffs over the same in any manner. At the same time, counter claim filed by the defendants for declaration was partly decreed to the effect that they were declared owners in possession of land measuring 7 kanals 15

marlas bearing in khasra No.30/16 (3-15) min West and 30/15 (4-0) min West. A decree for permanent injunction was also passed in their favour restraining the plaintiffs from alienating the suit property in any manner.

The short facts of the case which are required to be noticed for the purpose of disposal of the appeal are that plaintiffs namely, Bhajan Singh @ Harbhajan Singh and Surjit Kaur claim that they are owners in possession of the land bearing khasra no. 30//25(7-3), 30//16 (3-16) min East and 30//15 (4-0) min East as per jamabandi for the year 2001-2002, situated in village Chavinda Devi, Tehsil and District Amritsar. They claim that originally, Amrik Singh was owner of the land measuring 14 kanals 19 marlas bearing khasra No. 30//25(7-3), 30//16(3-16) min East and 30//15 (4-0) min East, Khata/ Khatauni No.168/300 as per jamabandi for the year 2001-2002. Amrik Singh during his life time vide two sale deeds dated 19.4.1982 sold the land measuring 7 kanals 16 marlas in favour of Surjit Kaur bearing khasra No.30//16(3-16) min and 30//15 (4-0) min East and land measuring 7 kanals 3 marlas bearing khasra No.30/25(7-3) in favour of Bhajan Singh @ Harbhajan Singh. On the basis of the said sale deeds, two mutation nos.1105 and 1106 were also entered and sanctioned and incorporated in the jamabandi for the year 1981-1982 and 1986-1987. However, in the later jamabandi for the year 1991-1992 and 2001-2002, names of plaintiffs as owners was deleted by the revenue authorities.

In the written statement, defendants took the stand that the suit is not maintainable. Defendant nos.1 to 4 are owners in possession of the suit property. Mutations of inheritance were sanctioned in favour of defendant nos.1 to 5 as they have inherited the suit property from their forefathers being ancestral property. Defendant no.5 Veero effected

partition of land with defendant nos.1 to 4 vide partition deed dated 27.11.2002 which has been implemented in the revenue record. Defendant nos.1 to 4 are exclusive owners in possession of the suit property. Plaintiffs were never in possession of the suit property. They wanted to take forcible possession of the suit land, for which an FIR under Section 307 IPC has been registered against them. Suit is hopelessly time barred. Suit land was owned by Avtar Singh predecessors-in-interest of the contesting defendants. One Tarlochan Singh filed suit for declaration regarding property left by Avtar Singh on the basis of the forged Will which was dismissed by the then Sub Judge Ist Class, Amritsar vide judgment and decree dated 31.3.1982. Appeal was also dismissed by the learned Additional District Judge, Amritsar on 30.11.1994. Veero daughter of Avtar Singh also filed civil suit for mandatory injunction against State of Punjab and others for directing them to sanction the mutation, which was decreed by the then Sub Judge Ist Class, Amritsar vide judgment and decree dated 25.4.1995. Plaintiffs have concealed all these facts. Amrik Singh never executed the sale deed during his life time. Defendants also filed counter claim, claiming declaration and injunction on the basis of same facts.

From the pleadings, following issues were framed:-

1. Whether the plaintiffs are entitled for declaration under Section 45 of the Punjab Land Revenue Act to enter their names in the revenue record as owners in possession qua the suit property? OPP
2. Whether the plaintiffs are entitled for permanent injunction restraining the defendants from alienating the suit property in any manner whatsoever? OPP

3. Whether the present suit filed by the plaintiffs is not legally maintainable? OPD
4. Whether the plaintiffs have filed the present suit within limitation? OPP
5. Whether the defendants/ counter claimants No.1 to 4 are entitled for declaration to the effect that they are owners in possession of the land measuring 22 kanals 14 marlas? OPD
6. Whether the defendants / counter claimants no.1 to 4 are entitled for consequential relief of permanent injunction restraining the defendants/ respondents from interfering into the possession of the counter claimants and from alienating the same in any manner whatsoever to any other person? OPD

Learned Civil Judge (Senior Division), Amritsar took up the issue nos.1, 2 and 3 together and determined the same in favour of the plaintiffs. Issue nos.4, 5 and 6 were also decided in favour of the plaintiffs. Accordingly, the above noted judgment and decree was passed in the suit filed by the plaintiffs and counter claim of the defendants.

In appeal, the learned Additional District Judge (Adhoc) Fast Track Court, Amritsar affirmed the findings and dismissed the appeal vide judgment dated 16.3.2013.

I have heard learned counsel for the parties and examined the lower Court record.

Plaintiffs have based their claim on the basis of the two sale deeds dated 19.4.1982. These two sale deeds were proved before the trial Court and therefore, sale of land by Amrik Singh, who was the then owner of the land is proved. It also comes out that at the time of sale, Bhajan

Singh @ Harbhajan Singh was in possession of the suit land as mortgagee and the mortgage money was adjusted in sale consideration.

Learned counsel for the present appellants-defendants has argued that the suit is time barred.

I am of the view that both the Courts below have rightly held that since it is mere correction of revenue record in accordance with the sale deeds, therefore, the claim is not time barred. Initially, name of the plaintiffs was entered on the basis of the sale deeds and mutation Nos.1105 and 1106 but later on their name was deleted without any valid reason in the jamabandi for the year 1991-1992 and 2001-2002. The sale deeds Ex.PW2/1 and Ex.PW2/2 were proved in accordance with law and even an expert was also examined to prove these sale deeds. Amrik Singh died later on in April 2000 and during his life time, he did not challenge the sale deeds from the year 1982 till 2000. Therefore, the said sale deeds are binding on his successors-in-interest. Suspicious circumstances were pointed out before the lower Court, which were repelled. Mentioning of adjustment of sale consideration in both the sale deeds was agreed between vendors and vendees and now, the defendants having stepped into the shoes of Amrik Singh, cannot question the same after so many years. Plaintiffs even examined expert to prove that Amrik Singh has executed the sale deeds. Lower Court has also brushed aside the contention of the defendants that the stamp papers were purchased on 7.4.1982 and sale deeds were executed on 19.8.1982. Further contention that Amrik Singh was not in exclusive possession was also repelled by referring to the revenue record.

After going through the lower Court file, I am of the view that findings of facts have been recorded by both the Courts below. There is no

illegality or infirmity in the same. No question of law arises for consideration of this Court. As such, findings recorded by both the Courts below on all the issues are upheld. Consequently, the present appeal stands dismissed with costs.

12.01.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No