

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

**R.S.A No.2483 of 2016(O&M)
Date of decision :23.08.2018**

Ravinder and another

..... Appellants

Versus

Anoop and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.J.P.Sharma, Advocate
for the appellants.

LISA GILL,J

Present appeal has been filed against the judgement and decree dated 05.03.2012 passed by the learned Civil Judge (Jr. Division), Bhiwani, whereby the suit filed by the appellant-plaintiff has been dismissed as well as judgement and decree dated 23.11.2015, passed by the learned Additional District Judge, Bhiwani, whereby their appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that the plaintiffs filed a suit for declaration to the effect that they are joint owners in possession of the suit land as described in the plaint and that sale deeds no. 35, 36 dated 09.04.2004 and sale deed No. 7 dated 06.04.2005, sale deed nos. 749, 752, 753 as well as release deeds No.754 dated 26.08.2003 and 735 dated 30.06.2004 are illegal, null void and not binding on the rights of the plaintiffs in any manner. It was pleaded that the property in question belonged to one Jaisa Mal, who had three sons namely Hari Chand, Bhagwan Dass, Arjan Dass and three daughters

namely Bhagwani Bai, Shanti Devi and Yashoda Devi. Jaisa Mal had transferred his share in the land measuring 508 Kanal 15 Marlas in favour of Hari Chand (i.e. husband of plaintiff no.1-Shanti Devi and father of the other plaintiffs) and Bhagwan Dass which is reflected in mutation no. 3812 dated 29.01.1955. Hari Chand was averred to be working with the Indian Railways and was posted at Rewari. Hari Chand along with all his family members resided at Rewari since 1955 till the death of Hari Chand in the suit property on 19.06.2000. Appellant no.1-Ravinder along with his mother went to Bhawani Khera in February 2005 in order to sell the share of Hari Chand as they were in need of money for the marriage of their daughter/sister. It then came to the light that share of Hari Chand was illegally got transferred by Arjan Dass vide mutation no. 3948 dated 14.12.1955 on the pretext that Hari Chand was wrongly mentioned as successor of Jaisa Mal in the earlier mutation and it was in-fact Bhagwan Dass and Arjan Dass who were the sons of Jaisa Ma and name of Arjan Dass should have been incorporated instead of Hari Chand. Mutation No. 3948 Ex.P2/A was thus sanctioned. Thereafter, land was sold in quick succession by Arjan Dass. Bhagwan Dass also sold part of the land. Bhagwan Dass and Arjan Dass further got the land partitioned mutually as reflected in mutation no. 2115 whereby Arjan Dass got 225 kanals 18 marlas of land and Bhagwan Dass got 212 kanals 13 marlas of land. 70 Kanals 4 Marlas of land stood sold by Arjan Dass and Bhagwan Dass. It was pleaded that although Arjan Dass was excluded by Jaisa Mal from the property, but it was agreed that the land would be shared equally amongst the three brothers. Transfer of land by Arjan Dass did not come

to the notice of Hari Chand and the plaintiffs as there was no occasion to doubt their intentions. It was pleaded that Bhagwan Dass and Arjan Dass predecessors-in-interest of defendants no.1 to 11 could have sold land upto 169 Kanal 10 Marlas only, being their share of the property, but sale of land in excess thereof could not be binding on the rights of the plaintiffs. Release deed no. 754 dated 26.08.2003 by Arjan Dass in favour of his sons i.e. defendants no.1 to 4 as well as release deed no. 30.06.2004 by Surinder kumar in favour of his wife are illegal, null and void. It is further averred that the land in question was sold and transferred only to defeat the rights of the plaintiffs. Despite request, defendants refused to admit the claim of the plaintiffs. Hence the present suit was filed.

Written statement was filed by defendants no.1, 2 and 4 while taking various preliminary objections and controverting the facts and averments on merits. Said defendants took a stand that predecessor-in-interest of the plaintiff-Hari Chand was not the son of Jaisa Mal. Jaisa Mal married Lachhmi Bai in Pakistan. Lachhmi Bai had a sister namely Maya Devi, who along with her husband died in accident in Pakistan. Hari Chand was the son of Maya Devi i.e. sister of Lachhmi Bai. He was brought up by Lachhmi Bai and Hari Chand and was in-fact a 'gailar'. Jaisa Mal died during the disturbances at the time of partition. Jaisa Mall's legal heirs i.e. his two sons and three daughters were born in Pakistan. Hari Chand was not the son of Jaisa Mal or Lachhmi Bai.

Moreover, the land in question along with other land was allotted by the Custodian Department in lieu of land which the defendants

had in Pakistan. The land was not allotted to Jaisa Mal, but to Bhagwan Dass and Arjan Dass, his sons and Lachhmi Bai, his widow. There was no allotment in favour of Jaisa Mal. Arjan Dass was a minor at that time. It was pleaded that Hari Chand's name was wrongly reflected in mutation no. 3812 instead of Arjan Dass. Allotment was made directly in the name of Bhagwan Dass, Arjan Dass and Lachhmi Bai. Therefore, mutation no. 3812 should necessarily have been entered on the basis of the allotment. It was wrongly entered as mutation of inheritance which was patently incorrect. Arjan Dass at that time was a minor therefore Hari Chand managed to manipulate Mutation No. 3812. When, this mistake came to the knowledge of the family members, it was got corrected vide mutation No. 3945 dated 14.12.1955. Name of Arjan Dass was duly incorporated instead of Hari Chand's. Hari Chand never exercised any control over the property in dispute. After joining service at Rewari, he never visited Bhiwani Khera. It is not believable that entries made in 1965 did not come to the knowledge of Hari Chand throughout his life. He never claimed any right even from the crop/produce of the land in question. The land was sold from time to time on various occasions by the defendants during the lifetime of Hari Chand, who never objected to the same. Except 71 Kanal 12 Marlas of land, all the other land was sold in the lifetime of Arjan Dass and Hari Chand. Hari Chand died on 09.06.2000. Suit was pleaded to be time barred. Wrong Khewat numbers are stated to have been given. In the year 1993-94, area of Khewat No. 1892 was 103 Kanal 12 Marlas and in the year 2003-04 much lessor. It was denied that the plaintiffs were in possession of the suit land. Possession was not

sought, therefore, the suit was stated to be bad on that account as well.

Separate written statements were filed by defendants no.7, 7(a), 7(b), 7(c) and 7(d) taking similar objections as taken by defendants no.1, 2 and 4.

Separate written statement was filed by defendants no. 5 and 12 to 16. Subsequent purchasers took the ground of being *bona fide* purchasers for consideration as well.

Separate written statement was filed by respondents no.5, 12 to 16 and 17 to 20, denying the claim of the appellant-plaintiffs.

Separate written statement was filed by defendants no.6, 8 to 11 taking similar objections as by 7 (a), 7 (b), 7 (c) and 7 (d).

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether plaintiffs are joint owners in possession of the suit property on the grounds as alleged in the plaint?OPP
2. Whether the sale deed Nos. 35 & 36 dated 06.04.2005, No. 754 dated 26.08.2003, No.749, 752 and 753 are wrong, illegal, null and void and not binding on the rights of the plaintiffs on the grounds as alleged in the plaint?OPP
3. Whether the release deed no.754 dated 26.08.2003 and release deed no. 735 dated 30.06.2004 are also wrong, illegal, null and void and not binding on the rights of the plaintiffs on the grounds as alleged in the plaint? OPP
4. Whether the suit of the plaintiffs is time barred?OPD
5. Whether the civil court has no jurisdiction to try and entertain the present suit?OPD
6. Whether the suit of the plaintiffs is bad for want of proper court fees?OPD
7. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
8. Relief.

Both the parties led evidence in support of their respective

claims.

Learned trial Court on appreciation of evidence on record, facts and circumstances of the case, dismissed the suit filed by the appellant-plaintiffs.

Appeal preferred by them was also dismissed by the learned Additional District Judge, Bhiwani, vide impugned judgement and decree dated 23.11.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant argues that both the learned Courts below have erred in relying upon documents Ex.D-1 and Ex.D-2 produced by the defendants as they are not letters of allotment. Ex.D-1 is a certificate of partition in which reference of allotment dated 20.09.1949 has been given, which in any case cannot be correct as no allotment could have been made on the said date. Allotment of land started only after the year 1950 after passing of the statute in respect to displaced persons in 1948. Moreover, Ex.D-1 and Ex.D-2 did not bear any government stamp therefore could not be read in evidence and neither could be treated as public documents. No reason has been set forth by the learned Courts to disbelieve Ex.P-1 i.e. copy of mutation no. 3812 dated 29.01.1955. Correction in the said mutation was carried out without any notice to Hari Chand and merely on the oral statements made. Moreover, plea taken that Bhagwan Dass and Arjan Dass were minors does not stand proved. It is further contended that the learned Courts below have wrongly held that no objection was raised by Hari Chand at the time of partition between Arjan Dass and Bhagwan Dass,

therefore, the suit is barred by limitation. Arjan Dass and Bhagwan Dass, it is contended could have sold only their share of the property and not beyond the same. Moreover, it was incumbent upon the defendants to have proved that Hari Chand was not the son of Jaisa Mal and Lachhmi Bai. It is further submitted that a writ petition was filed before this Court for registration of a case for commission of fraud upon Hari Chand by Bhagwan Dass and Arjan Dass and one Harkaran Dass, Lambardar, but the same was rendered infructuous as all the accused/persons who played fraud passed away. It is thus prayed that the present appeal be allowed and both the impugned judgements and decrees passed by the learned Courts below be set aside, consequently, decreeing the suit filed by the appellant-plaintiffs throughout.

I have heard learned counsel for the appellants and have gone through the file as well as record with his able assistance.

Appellant-plaintiffs in this case sought a declaration for being declared owners of the suit property on the basis that their predecessor-in-interest, namely, Hari Chand was the son of Jaisa Mall. It was incumbent upon the appellants to prove that firstly the property in question originally belongs to Jaisa Mal and secondly Hari Chand was indeed the son of Jaisa Mal. The defendants in order to prove that the property in question was never allotted to Jaisa Mal relied upon Ex.D-1 and Ex.D-2.

Translated version of Ex.D-1 reveals that Bhagwan Dass and Arjan Dass minor sons of Jaisa Mal and Lachhmi Bai w/o Jaisa Mal were allotted land in lieu of the land left by them in Pakistan. In case, Jaisa Mal

had been alive at that time, the allotment would have been in his favour. Pursuant to Ex.D-1, land was indeed allotted to Bhagwan Dass and Arjan Dass vide Ex.D-2 and mutation Ex.P1/A was sanctioned, though incorrectly at the first instance. No objection was ever raised by Hari Chand during his lifetime.

A perusal of Ex.D-1 further reveals that there is no recital that the land in question was allotted to Bhagwan Dass, Arjan Dass and Lachhmi Bai in lieu of land left by Jaisa Mal in Pakistan. Hari Chand is not depicted as the son of Jaisa Mal. Plea on behalf of the appellants that the documents Ex.D-1 and D-2 are fake and fabricated is not substantiated by evidence on record. The said documents carry the seal of the Assistant Collector. It is rightly held by the learned trial Court that the same are public documents and in view of Section 74 of the Indian Evidence Act, a *prima facie* presumption of truth is attached thereto. Appellant-plaintiffs indeed failed to establish that Ex.D-1 and Ex.D-2 are fake documents. There is indeed no evidence on record that Jaisa Mal was the owner of the suit property at any point of time.

It is pertinent to note that thereafter, the land was even partitioned between Bhagwan Dass and Arjan Dass as reflected in mutation Ex.P-3 dated 23.12.1975. Still, no objection was raised by Hari Chand *qua* the said partition. It is not believable that the said facts never came to the notice of Hari Chand as it is admitted by the plaintiffs that they were on visiting terms with the defendants. It is further to be noted that Hari Chand in his lifetime raised no objection to the sanction of the said mutation. He did not even object to the partition of the land in favour

of Bhagwan Dass and Arjan Dass which took place much later in December 1975. The subsequent mutation whereby necessary correction was made, Ram Chander, Numberdar had clearly stated that the name of Hari Chand has been wrongly entered in Mutation Ex.P1/A instead of Arjan Dass. It has been rightly held by both the learned Courts below that the plaintiffs case has to stand on its own legs and not depend upon the weakness of the other side. Moreover, there is nothing on record to explain as to why the plaintiffs and their father kept sleeping over their rights, if, at all, available to them.

Appellant-plaintiffs further failed to prove on record that their predecessor-in-interest-Hari Chand was the son of Jaisa Mal. Lachhmi Bai averred to be the mother of Hari Chand was alive at the time of filing of the suit, but was not examined for reasons best known to the plaintiffs. Though, it was contended that Lachhmi Bai was suffering from some illness therefore unable to depose, there is no evidence to substantiate the said averment. No person from the village has stepped in to the witness box to support the case of the plaintiffs. Entire case set up by the plaintiffs is on the basis of the wrongly sanctioned mutation Ex.P1/A, wherein Hari Chand is mentioned to be the son of Jaisa Mal. Hari Chand passed away on 19.06.2000. Though, in the death certificate of Hari Chand, his father's name is mentioned as Jaisa Ram, in Ex.P-3 i.e. the pension document pertaining to Hari Chand, his father's name does not find any mention. There is no merit in the argument that in view of the deposition of DW-1-Anoop, Hari Chand is admitted to be the son of Jaisa Mal. There is not an iota of evidence on record to indicate that Hari

Chand was the son of Jaisa Mal. It needs no repetition that the appellants were unable to even prove that Jaisa Mal was the owner of the property in dispute.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 05.03.2012 and 23.11.2015 passed by the learned Civil Judge (Jr. Division) Bhiwani and learned Additional District Judge, Biwani, respectively, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

23.08.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No