

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

RSA No. 2670 of 2016 (O&M)

Date of decision : August 27, 2018

Ram Jiwan and others

.....Appellants

Versus

Ram Kanwar and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

LISA GILL, J.

Appellant - plaintiffs are aggrieved of concurrent findings rendered against them by the learned Civil Judge (Junior Division), Gurgaon vide judgment and decree dated 19.03.2015 and learned Additional District Judge, Gurgaon vide judgment and decree dated 26.11.2015 and consequential dismissal of their suit.

Appellant – plaintiffs filed a suit for declaration with consequential relief of permanent injunction to the effect that they are joint owners in possession to the extent of 735/1920 in the suit land and for restraining the respondent - defendants from alienating their share in excess and for correction of the revenue entries. The property in question belonged to one Kishan Lal who had five sons and three daughters namely Mathura, Tara Chand (predeceased son represented by his legal heirs), Siria, Lekh Ram @ Lekhu, Chiranji, Bakhtawari, Kala and Surjo. 1/8th share in the property of Krishan Lal was inherited by the above. Lekh Ram @ Lekhu died issueless in the year 1984 and his 1/8th share in land was inherited by Mathura, Chiranji, Siria, Bakhtawari, Kala and Surjo. Mathura was the father of the appellant – plaintiffs. The respondent – defendants are the sons

of Tara Chand. Three sisters namely Bakhtawari, Kala and Surjo transferred their share in favour of three brothers and heirs of Tara Chand vide decree dated 17.03.1989. Chiranji died in the year 1993. He was issueless and his property was inherited by his two brothers Mathura (father of plaintiffs) and Siri Chand besides the three sisters. Chiranji's share was inherited by the said five persons. Siria @ Siri Chand also died issueless in the year 2003 and his entire estate was inherited by Mathura and three sisters in equal shares. Mathura – father of the appellants died in the year 2003 and his entire share in the suit land was inherited in equal shares by the appellants on the account of registered will dated 18.06.2001. Mutation No. 962 in this respect was sanctioned on 28.05.2007. However, it is pleaded that details of the entire land, which should have been mutated in their favour, is not mentioned. Mutations No. 903 and 904 have been illegally entered on the basis of release deed dated 24.01.2002 and 21.02.2002 allegedly suffered by Mathura and Chiranji in favour of the defendants i.e. legal heirs of Tara Chand.

It was averred that mutation No. 650 was wrongly sanctioned on 11.12.2001 on the basis of illegal, null and void decree dated 13.06.1990 allegedly suffered by Chiranji. Suit land was pleaded to be ancestral in the hands of Mathura – father of the appellants. Therefore, Mathura, Chiranji were not authorised to transfer any part of the suit land in favour of the respondents. Release deeds were, thus, pleaded to be illegal without consideration and in violation of the provisions of law. The appellants pleaded that wrong share regarding the land transferred by Bakhtawari, Kala and Surjo has been mentioned and mutation, accordingly, entered illegally.

The respondents refused for correction thereof. Therefore, the suit was filed.

The plaintiffs claim to be joint owners in possession to the extent of 26 Kanal 13 marlas of land i.e. 735/1920 share.

Respondent – defendants contested the suit while denying all the averments in the plaint. It was specifically pleaded that vide decree dated 17.03.1989, Bakhtawari and Surjo transferred 47/112 share out of their collective share, 7/16 in favour of Chiranji, Mathura and Siria besides 1/56th share out of their collective 7/16 share in favour of the defendants. Mutation No. 637 was sanctioned and thereafter corrected vide mutation No. 891. Chiranji suffered a decree dated 13.06.1990 in favour of the respondent – Ram Dutt. Thereafter, Siria and Mathura (father of the appellants) during their life time executed release deed dated 24.01.2002 and 21.02.2002 in favour of the respondent – defendant. The remainder was inherited by the plaintiffs. They did not inherit the share of Mathura their father as pleaded by them. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiffs are entitled to a decree for declaration to the effect that the plaintiffs are joint owners in possession to the extent of 735/1920 share in the suit land and are entitled to get the revenue entries corrected in their favour on the grounds as alleged?OPP.
- ii) If issue No. 1 is proved whether plaintiffs are entitled to a decree for permanent injunction on the grounds as alleged?OPP
- iii) Whether suit is not maintainable in the present form? OPD.
- iv) Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD.
- v) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct?OPD
- vi) Whether the suit is bad for non joinder of necessary

parties?OPD

vii)Whether the suit is hopelessly time barred by limitation?

OPD

viii)Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff – appellants. Appeal filed by the appellants was also dismissed by the learned Additional District Judge, Gurgaon vide judgment dated 26.11.2015. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiffs especially keeping in view the clear cut admission of DW1 Ram Dutt that the property in question came to the share of the appellants' father and his three brothers to the extent of 1/4th each. The findings returned by both the learned courts below, it is contended, are perverse in the face of this statement. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 19.03.2015 passed by the learned Civil Judge (Junior Division), Gurgaon and judgment and decree dated 26.11.2015 passed by the learned Additional District Judge, Gurgaon be set aside and suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellants and have perused the file as well as photocopy of the record, which was furnished by him in Court today.

It is not disputed that the land in question belonged to Kishan Lal and all his eight children (1/8th share of Tara Chand, predeceased son inherited by his legal heirs i.e. defendants) received 1/8th share. Three daughters of Krishan Lal transferred their share in favour of three brothers

and heirs of Tara Chand vide decree dated 17.03.1989. I have perused the plaint (Ex.PW3/A) which led to passing of decree dated 17.03.1989. Respective shares of the parties are duly mentioned in this plaint, which was filed by Chiranji, Siria, Mathura (father and predecessor-in-interest of the appellant – plaintiffs) alongwith legal heirs of Tara Chand. Their respective shares are mentioned in para 4 of the plaint with reference to the family settlement arrived at between the parties. Decree dated 17.03.1989 was, accordingly, passed. Release deeds dated 24.01.2002 and 21.02.2002 executed by Mathura and Siria are registered documents. There is indeed no cogent evidence on record to negate the said instruments. It is pertinent to note at this stage that the appellant – plaintiffs' paternal uncle Chiranji Lal had suffered a civil court decree dated 13.06.1990 in favour of respondent No. 2 – Ram Dutt. The appellants' father never challenged the said judgements and decrees during his life time. Mathura died in the year 2003. The present suit was filed in the year 2008 by the present appellants. It has been rightly held by the learned Additional District Judge, Gurgaon that the rights and liabilities of the parties in the suit land crystallised long back and the present is not a case of correction of revenue entries simplicitor. Release deed (Ex.P5) executed by Siria who died issueless reveals that he released the land in favour of respondent No. 1, his nephew out of love and affection as he used to serve Siria. Ex.D6 and Ex.D7 are release deeds executed by Mathura (father of appellants) and Siria to the extent of 4 kanal 19 marlas and 2 kanal 9 marlas in favour of defendants No. 1 and 2 respectively. The said release deeds were duly proved in accordance with law. It is reiterated that there is no reason or explanation as to why the said acts were not challenged at an earlier point of time. Predecessor-in-interest

of the appellants never challenged the same. The present appellants were very well aware of the factual position.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 19.03.2015 passed by the learned Civil Judge (Junior Division), Gurgaon and judgment and decree dated 26.11.2015 passed by the learned Additional District Judge, Gurgaon which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

August 27, 2018
rts

(Lisa Gill)
Judge

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