

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

**R.S.A No.6071 of 2016(O&M)
Date of decision :21.08.2018**

Jatinder Singh

..... Appellant

Versus

Champa Rani and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Himani Kapila, Advocate
for the applicant-appellant.

LISA GILL,J

CM-15990-C of 2016.

Heard.

Keeping in view the averments in the application duly supported by an affidavit as well as arguments addressed, delay of 21 days in filing of this appeal is condoned.

Application is disposed of.

RSA No.6071 of 2016.

The appellant-defendant is aggrieved of judgment and decree dated 10.05.2016, passed by the learned Additional District Judge, Gurdaspur, upholding the judgment and decree dated 18.04.2013, passed by the learned Addl. Civil Judge (Sr. Division), Gurdaspur, whereby the

suit filed by the plaintiff-respondent no.1, has been decreed.

Brief facts necessary for the adjudication of the case are that a suit for declaration was preferred by respondent no.1-plaintiff to the effect that she is owner in possession of land measuring 4 Kanal 10 Marlas as described in the plaint on the basis of a registered sale deed dated 19.04.1996 and further that mutation of the said land in favour of appellant-1-Jatinder Singh (respondent no.1 before the learned trial Court), respondent no.2 and respondents no.5 to 7 is illegal and not binding on her rights. Suit for possession was prayed for as well. It was pleaded that originally the land measuring 1 Kanal 16 Marlas was the ownership of Smt. Kesri, Balwant Singh, rattan Singh, Jarnail Singh, Shamsher Singh, Onkar Singh, Smt. Sita, Rano, being the widow, sons and daughters of Chhajju Ram to the extent of 1/4th share. Sansar Singh, Mukhtiar Singh and Bishamber Dass were owners to the extent of 3/4th shares and land in Khewat No. 427 land measuring 97 Kanals 13 Marlas was under the ownership of Smt. Kesri and others to the extent of 3/16 share, whereas, Sansar Singh and others were owners to the extent of 9/16 shares. Gian Singh was the owner to the extent of 1/4 share. The plaintiff by way of this suit merely claimed relief against the legal heirs of Sansar Singh and Gian Singh, who have since died. The plaintiff has not claimed any relief against others, but they have been impleaded while stating them to be necessary parties. Defendants no.3 and 4 are the legal heirs of Sansar Singh, whereas, defendant no.8 is the legal heir of Gian Singh. The aforesaid Gian Singh and Sansar Singh had sold almost their entire land and may have retained a very small portion of land in the

abovesaid khewat. The plaintiff purchased land measuring 4 Kanals 10 Marlas vide sale deed dated 19.04.1996 from Sansar Singh father of the defendants no.3 and 4. It is submitted that possession was also delivered to the plaintiff. The husband of the plaintiff is also one of the co-sharer in the abovesaid Khewat. Specific Khasra numbers were sold to the plaintiff, which were in possession of her husband. After the purchase of the suit property, the husband of the plaintiff handed over the copy of the sale deed to the Halqa Patwari for sanctioning the mutation. The Halqa Patwari informed that the mutation shall be sanctioned in favour of the plaintiff. However, the Halqa Patwari did not enter the mutation nor got the same sanctioned. As such, due to non sanctioning the mutation, the name of the plaintiff has not been incorporated in the revenue record, whereas, only the husband of the plaintiff is shown as co-owner. The abovesaid facts came to the knowledge of the plaintiff and her husband when they procured the copy of the revenue record for getting the land partitioned. The plaintiff and her husband requested the Halqa Patwari to enter the mutation and get the same sanctioned, but to no effect. Hence, the present suit was filed.

Appellant (defendant no.1 before the learned trial Court) and respondent no.2 as well as defendants no.3, 4 and 7 filed separate written statements while resisting the suit of the plaintiff. It was contended that the plaintiff-respondent had no *locus standi* to file the present suit. Sale deed in favour of the plaintiff-respondent was pleaded to be null and void, whereas sale deed dated 18.05.1996 in respect to the land in question in favour of the answering respondents was legal and valid.

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

1. Whether the plaintiff has purchased land measuring 04 kanal 10 marlas vide sale deed dated 19.04.1996?OPP.
2. Whether the plaintiff is entitled to the declaration as prayed for?OPP
- 2.A Whether the plaintiff is entitled to the possession of the property?OPP
3. Whether the suit is within limitation?OPP
4. Whether the suit is bad for non joinder of necessary parties. If so its effect?OPD
5. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts on record, and evidence of the case concluded that the plaintiff-respondent no.1 was the co-owner of the suit property and is entitled to join possession of the same. It was observed that the plaintiff-respondent no.1 had failed to prove on record that Sansar Singh, the vendor from whom she had purchased the land in question was in exclusive possession of the property. Plaintiff-respondent no.1 was held entitled to seek partition before the Revenue Authorities. The suit was accordingly decreed.

Appeal preferred by the present appellant was dismissed by the learned Additional District Judge, Gurdaspur, vide impugned judgment and decree dated 10.05.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that

learned Lower Court has not considered the effect of sale deed dated 18.05.1996 Ex.DW2/A, in favour of the appellant. The exclusive possession of the present appellant is proved on record. Therefore, the present suit deserves to be dismissed.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

Plaintiff-respondent no.1 instituted the present suit for declaration against the appellant-defendant as well as others defendants on the ground that land measuring 1 Kanal 16 Marlas in Khewat no. 326 was owned by Smt. Kesri, Balwant Singh, rattan Singh, Jarnail Singh, Shamsheer Singh, Onkar Singh, Smt. Sita, Rano, being the widow, sons and daughters of Chhajju Ram to the extent of 1/4th share and Sansar Singh, Mukhtiar Singh and Bishamber Dass were owners to the extent of 3/4th shares and Khewat No. 427 land measuring 97 Kanals 13 Marlas was under the ownership of Smt. Kesri and others to the extent of 3/16 share, whereas, Sansar Singh and others were owners to the extent of 9/16 shares. Gian Singh was the owner to the extent of 1/4 share. Relief was claimed only against the legal representatives of Sansar Singh and Gian Singh. It is the specific case of the plaintiff-respondent no.1 that she purchased land measuring 4 Kanal 10 Marlas vide sale deed dated 19.04.1996 Ex.P-1 from Sansar Singh. Husband of the plaintiff was one of the co-sharer in the abovesaid khewat. However, mutation was not entered in her name by the Halqa Patwari. When, her husband obtained the jamabandi from the Halqa Patwari for the purpose of partition of land, this fact came to the light. The authorities refused to enter the mutation.

Defendants refused to admit the claim of the plaintiff. Hence the suit.

Per contra, the appellant set up a case that there is another sale deed dated 18.05.1996 in regard to which mutation has been duly sanctioned. Sale deed dated 18.05.1996 was executed by Gian Singh in favour of the present appellant, while sale deed dated 19.04.1996 (Ex.P1) in favour of respondent no.1 was executed by Sansar Singh. It is not in dispute that Sansar Singh and Gian Singh, both were co-sharers of the property. They have sold their respective shares to the parties to the lis. There is no dispute that sale deed in favour of the present plaintiff was executed prior to the sale deed in favour of the appellant. It is a settled position that mutation cannot confer title. In the light of the fact that both Sansar Singh and Gian Singh were co-sharers, it is apparent that it is their respective shares which were be sold to the plaintiff and the appellant. Plaintiff-respondent no.1 is indeed entitled to a declaration that she is a co-owner in the suit property even as she has failed to prove the exclusive possession of Sansar Singh on the property in question. It has been rightly held by the learned trial Court that she has a remedy to seek partition before the Revenue Authorities.

No other argument has been raised.

Learned counsel for the appellant-defendant 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 judgments are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record.

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 18.04.2013 and 10.05.2016 passed by the learned Addl. Civil Judge (S. Division) Gurdaspur and learned Additional District Judge, Gurdaspur, respectively, which warrant any interference by this Court.

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

21.08.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No