

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5087 of 2015(O&M)

Date of Decision: 11.07.2018

Angrej Singh @ Angrez Singh

---Appellant

versus

Harbans Singh

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Arvind Kashyap, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by the appellant -plaintiff seeking declaration that he is joint owner and in joint possession to the extent of 1/2 share and that respondent No. 1 is neither co-owner nor has any concern or connection with the land mentioned at letter-A, comprised in khasra No. 252(0-7), situated within revenue limits of village Kalour, Tehsil Bassi Pathana, District Fatehgarh Sahib, was dismissed by the trial court vide judgment and decree dated 19.2.2015 that came to be affirmed in appeal by the Additional District Judge Fatehgarh Sahib on 26.5.2015.

The appellant-plaintiff filed the suit for declaration on the premise that previously he alongwith one Isher Singh (father of respondent No. 1) was the co-owner of suit property to the extent of 1/4th share each. Isher Singh orally exchanged his land with him and share of Isher Singh

was transferred to appellant and in lieu thereof, Isher Singh got land comprised in khasra No. 246/2/1(0-2), 247/1(0-7). As a result, appellant became owner in possession to the extent of $\frac{1}{2}$ share in the suit property. The remaining $\frac{1}{2}$ share is jointly owned and possessed by proforma respondents (respondents No. 2 and 3). Mutation No. 2493 dated 23.2.1996 was duly sanctioned on the basis of said oral exchange. However, in the subsequent jamabandis, mutation has not been incorporated and appellant has been shown as owner in possession alongwith Isher Singh to the extent of $\frac{1}{4}^{\text{th}}$ share each. The land given to Isher Singh comprising khasra No. 246/2/1(0-2), 247/1 (0-7) was rightly recorded in the name of Isher Singh in the subsequent jamabandis.

Defendant No. 1 filed the written statement and denied the alleged oral exchange. It is averred that the suit is barred by res judicata by virtue of decree passed in civil suit No. 51-T/24.3.2009/13.1.2007/2008 titled "Harbans Singh vs. Angrej Singh".

The controversy between the parties led to framing of issues, reproduced in para 4 of the judgment of the trial court. The trial court dismissed the suit by holding that suit filed by the appellant is barred by principal of res judicata even though there is merit in the factual controversy raised by the plaintiff/appellant. The findings recorded by the trial court with regard to the suit being barred by res judicata were affirmed by the Court in Appeal.

Counsel for the appellant has assailed consistent findings of the courts with regard to the suit being barred by res judicata primarily on the ground that the matter with regard to ownership of khasra No. 252(0-7) was not directly and substantially in issue in the previous suit and incidental

finding of title in a suit for injunction would not constitute res judicata in the present case. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Syed Mohd. Salie Labbai (dead) by Lrs. and others vs. Mohd. Hanifa (dead) by Lrs and others AIR 1976 (SC) 1569, Gram Panchayat of Village Naulakha vs. Ujagar Singh 200(4) RCR (Civil) 749 and Isher Singh vs. Sarwan Singh and others AIR 1965 (SC) 948.**

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the courts and judgment in the suit for injunction available in RSA No. 5432 of 2015, decided vide order of even date.

Though, no doubt, the plaint and written statement of the suit for injunction filed by respondent Harbans Singh is not a part of records in the present litigation but counsel for the appellant has not disputed that in the said suit, dispute pertains to khasra No. 251/1(0-5) (not subject matter of the present lis) and khasra No. 252(0-7) in dispute in the present litigation.

Harbans Singh filed suit for injunction restraining the defendant (appellant herein) from ousting him from joint possession of property comprised in khasra No. 251/1 and 252 with the averments that he has half share in khasra No. 251/1 and 1/4th share in khasra No. 252 out of suit property. It was averred that the defendant therein is threatening to oust the plaintiff therein from joint possession of the suit property to make construction over the same, make alterations in the revenue record forcibly, illegally and without getting it partitioned from any competent authority.

The appellant/defendant therein filed the written statement raising a specific plea that as regards khasra No. 252, vide agreement dated

6.2.1996 predecessor-in-interest of the plaintiff therein i.e. Isher Singh exchanged $\frac{1}{4}$ th share of khasra No. 252 with Angrej Singh. Isher Singh vide exchange deed dated 6.2.1996 exchanged his $\frac{1}{4}$ share in khasra No. 252 with the area of 246/2 and 247/1 owned by Angrej Singh. Mutation No. 2493 was sanctioned on the basis of said exchange. After the said mutation, Isher Singh and now Harbans Singh is left with no share in khasra No. 252. Angrej Singh is joint owner to the extent of $\frac{1}{2}$ share in khasra No. 252 i.e. $\frac{1}{4}$ already in his name and $\frac{1}{4}$ th share which he got from Isher Singh vide exchange deed dated 6.2.1996.

As in the previous suit, claim of the plaintiff therein (respondent in the present appeal) was based upon his plea of being co-owner of khasra No. 252 (0-7) to the extent of $\frac{1}{4}$ th share and the appellant raised a specific issue that the respondent is no longer co-owner of khasra No. 252 in view of exchange made by Isher Singh, predecessor-in-interest of the respondent and the said fact was determined by the courts while accepting plea of the respondent for grant of injunction, it is difficult to accept contention of the appellant that question of ownership qua khasra No. 252(0-7) was not directly and substantially in issue in the previous litigation or findings recorded by the courts in the previous litigation qua khasra No. 252 are only incidental, therefore, do not constitute res judicata. The matter would have been different had the respondent filed a simpliciter suit for injunction restraining the appellant from dispossessing him from land jointly owned by the parties. In that eventuality, it might have been possible for the appellant to raise an issue that question of title was incidental in the suit for injunction in regard to possession. In this view of the matter, I do not find an error in consistent findings recorded by the

courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly
dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

11.7.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No