

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

RSA No. 6973 of 2016 (O&M)

Date of decision : August 03, 2018

Avtar Singh

.....Appellant

Versus

Prem Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Munish Gupta, Advocate for the appellant.

LISA GILL, J.

This appeal has been filed challenging judgment and decree dated 07.08.2013 passed by the learned Additional Civil Judge (Senior Division), Rajpura as well as judgment and decree dated 22.08.2016 passed by the learned Additional District Judge, Patiala.

Suit filed by the appellant/plaintiff – Avtar Singh alongwith Surjan Singh (not in appeal before this Court) for declaration and permanent injunction was dismissed by the learned trial Court and the same was upheld by the learned Appellate Court while dismissing the appeal filed by Avtar Singh.

Brief facts of the case are that the appellant Avtar Singh son of Sawan Singh son of Chajju Singh alongwith his uncle Surjan Singh son of Chajju Singh filed a suit for declaration to the effect that they had 1/3rd share in the property in dispute and all the other defendants – respondents had 1/3rd share in the said land. Further prayer for declaration was addressed to the effect that the registered sale deed dated 28.04.2006 executed by respondents No. 1 to 3 in favour of respondents No. 8 and 9 was illegal null, void and not binding upon the rights of the plaintiffs. It was further prayed

that declaration to the effect that order dated 09.04.1997 in favour of Arjan Singh passed by the Joint Development Commissioner is liable to be set aside and the entries in the revenue record on the basis thereof are liable to be corrected. Consequential relief of permanent injunction restraining the respondents from alienating, transferring or creating other encumbrances on the suit property was sought as well.

It was pleaded that the suit land was jointly owned by Surjan Singh, Arjan Singh and Sawan Singh (father of appellant – Avtar Singh) sons of Chajju Singh before consolidation of holdings. Appellant – Avtar Singh was stated to be 5-6 months old when his father Sawan Singh passed away. Plaintiff – Surjan Singh (not an appellant before this Court) was stated to an old, aged, illiterate and simpleton kind of a person. Possession of the land remained joint. Sita Singh son of Arjan Singh passed away. Respondents No. 4 to 7 are the legal representatives of Sita Singh. During consolidation, khasra numbers were changed and the land in dispute came to the plaintiffs and the defendants in equal shares i.e. $1/3^{\text{rd}}$ each to both the plaintiffs and $1/3^{\text{rd}}$ share to the other defendants. However, mutation in favour of the Gram Panchayat was sanctioned in the year 1958-59 which is revealed in the missal hakiyat. It was only the name of Arjan Singh, which was incorporated in the records though the parties remained in joint possession of the suit land. Arjan Singh, it is averred, is a clever person. He preferred an appeal No. 7/95 before the Joint Development Commissioner under Section 11(2) of the Punjab Village Common Lands (Regulations) Act (for short – 'the Act') without impleading the plaintiffs. Appeal was decided in favour of Arjan Singh, who was held to be the owner thereof. Entry in the revenue records was, accordingly, made in favour of Arjan

Singh. After the death of Arjan Singh, mutation of inheritance was sanctioned in favour of his sons Prem Singh, Sita Singh, Labh Singh and Jarnail Singh on 10.06.2004. It was further stated that the plaintiff – Avtar Singh was a minor at that time. He came to know about these entries after execution of sale deed dated 28.04.2006 in favour of respondents No. 8 and 9 by Prem Singh, Labh Singh and Jarnail Singh. Despite request, sale deed dated 28.04.2006 was not treated as null and void. Therefore, the present suit was filed.

Upon notice, respondents No. 1 to 3 besides respondents No. 8 and 9 appeared. They filed their separate written statements and resisted the suit filed by the plaintiff. Respondents No. 1 to 3 denied the averments that the suit land was jointly owned by the parties. Suit for permanent injunction was filed by Arjan Singh against Gram Panchayat on 01.04.1991 and on the statement of the counsel for the Gram Panchayat that they would not take forcible possession from Arjan Singh etc., the suit was withdrawn on 14.08.1991. Thereafter, Arjan Singh filed a petition under Section 11 of the Act for declaring him to be the owner of the suit land. The Joint Development Commissioner, Punjab accepted the appeal of Arjan Singh on 09.04.1997. This Court vide order dated 26.08.2000 in CWP No. 9467 of 1998 upheld the said order while dismissing the writ petition filed by the Gram Panchayat.

After the death of Arjan Singh, mutation of inheritance was sanctioned in favour of respondents No. 1 to 3 and Sita Singh. It was admitted that respondents No. 1 to 3 sold their share to respondents No. 8 and 9 vide registered sale deed dated 28.04.2006 for consideration. The suit was pleaded to be time barred and filed only with a view to harass the said

respondents. Respondents No. 8 and 9 claimed to be bona fide purchasers for consideration. Replication was not filed.

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

1. Whether plaintiffs are entitled to the relief of declaration as prayed for?OPP
2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiffs is not properly valued for the purpose of court fee?OPD
4. Whether the defendants are bonafide purchasers?OPD
5. Whether the plaintiffs have no cause of action to file the present suit?OPD
6. Whether the suit of the plaintiffs is not legally maintainable in the present form?OPD
7. Whether the plaintiffs have not come to the Court with clean hands and have suppressed true and material facts from the court?OPD
8. Relief.

Evidence was led by both the parties. The learned trial Court on consideration of the evidence, facts and circumstances dismissed the suit filed by the plaintiffs. Appeal preferred by Avtar Singh was also dismissed by the learned Additional District Judge, Patiala vide judgment and decree dated 22.08.2016. Aggrieved therefrom, present appeal has been filed by Avtar Singh,

Learned counsel for the appellant vehemently argues that once the Joint Development Commissioner exercising the powers of Commissioner under the Act, passed order dated 09.04.1997 in favour of Arjan Singh, in his petition under Section 11 of the Act, the present appellant is also entitled to joint possession of the property being the co-

owner thereof. This so so for the reason that prior to the consolidation of holdings, the land was jointly owned and possessed by the plaintiffs, defendants No. 1 to 3 and Sita Singh. There was no necessity of filing a separate petition under Section 11 of the Act by all the co-owners. It is further contended that the suit in question is not barred under Section 13 of the Act as the controversy in hand is not related to the nature of the land in question. The nature of the land already stands decided in favour of Arjan Singh. The appellant is entitled to the declaration as sought. Sale deed dated 28.04.2006 in favour of respondents No. 8 and 9 should be set aside. It is, thus, prayed that both the impugned judgments and decrees be set aside and this appeal be allowed, consequently, the suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file.

The appellant alongwith his uncle Surjan Singh had filed the present suit claiming to be the owner in possession of the suit land to the extent of 1/3rd share each. Admittedly, Arjan Singh had filed a petition under Section 11 of the Act after he withdrew his suit for permanent injunction pursuant to the statement on behalf of Gram Panchayat, that it would not dispossess him from the property in question in a forcible manner.

Section 11 of the Act reads as under:-

“11. Decision of claims of right, title or interest in shamlat deh.--

(1) Any person or a Panchayat claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such

time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person of a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from any may pass such order as he deems fit.”

It is noticed that the Joint Development Commissioner vide order dated 09.04.1997 declared Arjan Singh to be the owner of the land in dispute. CWP No. 9467 of 1998 filed by the Gram Panchayat against the said decision was dismissed by this Court on 26.08.2000. The ownership of Arjan Singh over the suit property has clearly been upheld by this Court. Dismissal of the said writ petition has not been mentioned in the plaint. The appellant has challenged order dated 09.04.1997 whereas Gram Panchayat has not been arrayed as a party to the present suit.

The appellant alleged that he was a minor at the time Arjan Singh was declared to be the owner of land in dispute. Learned trial Court has rightly held that there is no document on record to prove his minority at the time of passing of the said order neither is there any evidence on record to show that the co-plaintiff was illiterate or a simpleton kind of a person, having no knowledge of the worldly affairs. PW1 in his cross examination admitted that at the time of filing of petition under Section 11 of the Act by Arjan Singh, khasra girdawari was in the name of Arjan Singh. There is indeed no evidence on record to reflect that the plaintiffs or father of Avtar Singh were ever in possession of the land in question. The evidence in this

respect has been correctly appreciated by both the learned Courts below. It is rightly held that the present civil suit questioning the legality of order dated 09.04.1997 was not maintainable.

The novel argument has been raised by learned counsel for the appellant that once the authorities had declared Arjan Singh to be the owner of the property in question, therefore, the present appellant as well as the co-plaintiffs should automatically be treated to be the co-owners in possession as they were in possession earlier to the consolidation. This argument is clearly devoid of any merit in the factual matrix of the case and is accordingly rejected.

Concurrent findings of fact have been returned by both the learned courts below on a proper appreciation of the evidence on record which call for no interference by this Court in second appeal.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 07.08.2013 passed by the learned Additional Civil Judge (Senior Division), Rajpura as well as judgment and decree dated 22.08.2016 passed by the learned Additional District Judge, Patiala, which calls for interference by this Court.

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

(Lisa Gill)
Judge

August 03, 2018
rts

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