

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

**RSA No.2842 of 2017 (O&M)
Date of Decision.08.02.2018**

Gamdoor Singh Chala and othersAppellants

Vs

Tara Singh and othersRespondents

2. RSA No.2843 of 2017 (O&M)

Balwant Singh (since deceased) through LRs and othersAppellants

Vs

Tara Singh and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Paramjit Batta, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.7047-C of 2017 in RSA No.2842 of 2017
C.M. Nos.7052-C of 2017 in RSA No.2843 of 2017

For the reasons stated in the application, delay of 96 days in re-filing the respective appeals is condoned.

Applications are allowed.

C.M.No.7048-C of 2017 in RSA No.2842 of 2017

The application for impleading the legal representatives of appellant No.11 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.7053-C of 2017 in RSA No.2843 of 2017

The application for impleading the legal representatives of appellant No.1 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.7049-C of 2017 in RSA No.2842 of 2017

The application for impleading the legal representatives of respondent No.4 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.7054-C of 2017 in RSA No.2843 of 2017

The application for impleading the legal representatives of respondent No.23 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.7050-C of 2017 in RSA No.2842 of 2017

C.M. No.7055-C of 2017 in RSA No.2843 of 2017

The aforementioned appeals are accompanied by application under Order 41 Rule 27 CPC for bringing on record Annexure A-1 i.e. copy of jamabandi of village Ghanauri Khurd, Tehsil Dhuri, District Amargarh for the year 1911-1912 on the premise that the aforementioned evidence despite sincere effort was not exhibited and if permitted to be placed on record, would enable this Court in factual and proper adjudication of the appeals to show that the property which, according to the plaintiff, was alleged to have been inherited by his father from his father was in fact owned and possessed by Puran son of Nihala and not by plaintiff or his father.

I am of the view that such evidence cannot be brought on record at this stage as nothing prevented the appellants-defendants to place on record and prove the same before the trial Court or the lower Appellate Court. Allowing the application at this stage would tantamount to de novo

trial which is not the scope and ambit of provisions of Order 41 Rule 27 CPC.

The applications stand dismissed.

Main cases

This judgment of mine shall dispose of two regular second appeals bearing No.2842 and 2843 of 2017, the former has been preferred by the appellants-defendants No.16 to 28, defendant No.22, 23, 26 (since deceased through LRs) and the latter at the instance of the appellants-defendant Nos.1, 2, 3 and 12 against the judgment and decree rendered by the Courts below whereby the suit of the respondent-plaintiff seeking, the following relief, has been partly decreed qua possession over the suit property to the extent of share plaintiff-Tara Singh as reversionary of Waryam Singh in the suit property subject to payment of amount as per the judgment and decree dated 16.04.1958 without any prejudice to the share of Tej Kaur or any other legal heirs of Waryam Singh in the suit property with a further declaration that defendant No.44 would have first charge on the suit property by restraining the defendants from alienating, mortgaging or transferring the suit land except in due course of law, by dismissing the suit qua other reliefs.

“A) Suit for possession of land comprised in Khasra No.24/7-17 from defendants No.1 to 15, Khasra No.738/6-5, 739/4-0, total 10 Bighas 5 Biswas from defendants No.16 to 31 and Khasra No.764/6-5, 765/6-5, 766/7-19, total land measuring 20 Bighas 9 Biswas from defendants No.32 to 34 situated in the revenue estate of Village Ghanauri Khurd, Tehsil Dhuri, District Sangrur as per Jamabandi for the year 2004-2005, on

the basis of title, after payment of Rs.1985/- to defendants No.1 to 14 and Rs.4068/- to defendants No.32.

B) Suit for recovery of Rs.61,996/- as mesne profits for the above said land for the year 2008 from defendants No.1 to 14 to the extent of 11506/- being 1/3rd share of total amount of Rs.34,158/- and from defendants No.16 to 31 Rs.15,466/- being 1/3rd share of Rs.46,398/- and from defendants No.32 amount of Rs.35,024/- being 1/3rd share of Rs.1,05,072/-.

C) Suit for declaration that plaintiff is entitled to use passage which exists on the eastern side of Khasra No.763 which is 2 karam in width, 50 karam in length having total area 5 biswas for the purpose of ingress and outgress to khasra Nos.764, 765, 766 which is the only approach to the fields of the plaintiff and plaintiff has a Easementary right in this respect.

D) Suit for permanent injunction restraining the defendants for alienating by way of sale, mortgage or transfer in any manner the above said land.”

Before advertng to the rival contentions of the parties, it would be apt to give a pre-face of the matter. The plaintiff instituted the suit aforementioned in respect of the property described in the plaint on the premise that originally Bhola Singh forefather of the plaintiff was the owner of the suit property which was later inherited by plaintiff's father Waryam Singh. A mutation bearing No.113 dated 12.06.1953 was sanctioned in this regard. Waryam Singh, during his life time, mortgaged and sold the suit property to various persons. A suit bearing No.143 dated 09.08.1955 was filed by the plaintiff when he was a minor through his next friend, Ms.

Joginder Kaur for declaration against the vendees and mortgagees of Waryam Singh, which was decreed vide judgment and decree dated 30.04.1957.

The defendants in the aforementioned suit namely Bahal Singh and Jangir Singh filed two separate appeals before the lower Appellate Court. The lower Appellate Court partly allowed the same and modified the judgment and decree dated 30.04.1957 by holding that the mortgage deed dated 11.04.1950 and connected sale for Rs.4,000/- dated 10.04.1954, sale deed dated 10.02.1951 of 25 bighas 15 biswas out of the subject matter to the mortgage deed 10.02.1951 and sale deed dated 06.02.1954 of 10 bighas of land out of 15 bighas 11 biswas being without legal necessity would not affect the reversionary rights of the plaintiff except to the extent of Rs.4,067.4 annas and Rs.1985/- respectively.

As per the averments in the plaint, the judgment and decree passed by the lower Appellate Court attained the finality. After the filing of the aforementioned civil suit, consolidation proceedings took place in the village wherein new khasra numbers were allotted in lieu of old khasra numbers by the consolidation authorities. Khasra No.729/15-11 was mortgaged by Waryam Singh in favour of Jangir Singh and later on, Jangir Singh purchased land measuring 10 bighas and mutation No.1945 dated 13.02.1955 was sanctioned, to that effect. In khatauni of consolidation, the entry of mutation was mentioned in the column of remarks against khewat No.184/443 but after consolidation, it was entered in new khatauni as Khewat No.290/309 against Khasra No.24/7-17. These khasra numbers were allotted in lieu of erstwhile Khasra No.729 which was purchased by Jangir Singh from Waryam Singh.

Before consolidation, land measuring 12 bighas 3 biswas bearing khasra No.978/2-3, 987/2-19, 1048/3-14, 1049/2/3-7 was mortgaged by Waryam Singh to Hazura Singh and Jit Singh which was later purchased by Hazura Singh in the name of his sons namely Avtar Singh, Sham Singh, Kartar Singh, Gurnam Singh, Nahar Singh and mutation No.1954 dated 13.2.1955 sanctioned before consolidation mentioned in remarks columns against Khewat/Khatauni No.184/445. In lieu of old khasra numbers, after consolidation, purchasers were allotted new Khasra No.738/6-5, 739/4-0 for land measuring 10 bighas 5 biswas and mutation No.1954 was mentioned in the remarks column. The land measuring 32 bighas 17 biswas mortgaged by Waryam Singh to Babu Singh, Jang Singh, Ghuman Singh sons of Bir Singh and it was incorporated in new khatauni of consolidation mentioned at Khewat No.184, Khatauni No.446 of Khatauni Isemaal. Out of aforementioned land, Jang Singh purchased 25 bighas 15 biswas in the name of his son Bahal Singh and mutation No.1962 dated 19.03.1955 was sanctioned and entered in this regard against Khewat No.184, Khatauni No.445 and in new Khasra No.764/6-5, 765/6-5, 766/7-19 for land measuring 20 bighas 9 biswas were allotted to Bahal Singh and mutation No.1962 was mentioned in the remarks column against Khewat No.289 and Khatauni No.308 after consolidation. In Khatauni Paimaish, the old khewat number of khewat No.289/308 is recorded as 184/444, but its khatauni No.446.

On 16.08.2008, Waryam Singh died, leaving behind Tara Singh plaintiff and Tej Kaur defendant No.43 while Joginder Kaur his wife who pre-deceased in 2004. Chand Singh @ Harchand Singh Chahal son of Avtar Singh also died unmarried and issueless leaving behind Gamdoor Singh

Chahal, Bhupinder Singh and Amar Kaur as his only legal heirs, who were his real brothers and sisters. The defendants were legal representatives of original vendors or mortgagees, therefore, plaintiffs alleged that defendant Nos.1 to 14 and 32 were in illegal possession of the suit property after the death of Waryam Singh and thus, entitled to mesne profits but when requested, the defendants threatened to alienate the property. Therefore, necessity arose to seek injunction, hence suit.

Upon notice, defendant No.1, 2, 3, 5, 33 and 34 filed joint written statement, took various legal objections qua limitation, misjoinder and non joinder of necessary parties and denied that the plaintiff was entitled to claim compensation on the basis of judgment and decree dated 30.04.1957. However, the factum of decision rendered in civil suit bearing No.143 dated 09.08.1955 was vehemently denied. The factum of consolidation proceedings after the decision of the suit was also emphatically denied. Defendant Nos.16 to 21, 23 to 32 and 35 to 41 filed their separate written statement on the lines of written statement of defendant Nos.1 to 3, 5, 33 and 34 stating that the plaintiff had earlier got instituted the suit titled as “Jagjit Pal Singh Vs. Roop Singh etc.” from his own son wherein he was arrayed as defendant No.41 and could have easily transposed himself as plaintiff but filed the instant suit, thus, two suits on the same cause of action were not maintainable. Defendant No.42 and 43 filed separate written statement and denied the averments in the plaint. Defendant No.44 filed the written statement stating therein that defendant No.1 to 4 mortgaged the land measuring 3 bighas 11 biswas of land out of land being 71/972 share of land measuring 48 bighas 12 biswas situated in the revenue

estate of village Ghanauri Khurd vide Rapat No.36 for Rs.2,80,000/- in his favour.

The parties were at variance, therefore, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to possession of suit property on the basis of judgment and decree dated 30.04.1957, as prayed for? OPP*
- 2. If so, whether the plaintiff is entitled to declaration, as prayed for? OPP*
- 3. If so, whether plaintiff is entitled to permanent injunction, as prayed for?*
- 4. Whether the plaintiff is entitled for recovery of Rs.61,696/- as mesne profit? OPP*
- 5. Whether the plaintiff has no right to seek any relief on the basis of judgment and decree dated 30.4.1957? OPD*
- 6. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 7. Whether the defendants are entitled for special costs? OPD*
- 8. Whether the suit of the plaintiff is barred for limitation? OPD*
- 9. Whether the suit is bad for non-joinder and mis-joinder of parties? OPD*
- 10. Whether this Court has no jurisdiction to decide the present suit? OPD*

11. Whether suit of the plaintiff is barred under Order 2 Rule 2 CPC read with Section 11 (Explanation IV)? OPD

12. Whether the plaintiff has no approached the court with clean hands? OPD

13. Whether suit of the plaintiff is not maintainable? OPD

14. Relief.”

The respondent plaintiff brought on record the documents from Ex.P-1 to P-40 and defendants from Ex.D-1 to D-6. On the basis of aforementioned pleadings and preponderance of evidence, the trial Court partly decreed the suit only qua possession over the suit property to the extent of share of the plaintiff Tara Singh being reversionary of Waryam Singh, subject to payment of amounts specified in the judgment and decree dated 16.04.1958 without prejudice to the share of Tej Kaur or any other legal heirs of Waryam Singh by creating a charge on the suit property in favour of defendant No.44. The defendants were restrained from alienating, mortgaging or transferring the suit property. The appellants-defendants assailed the aforementioned judgment and decree passed by the trial Court by filing two appeals bearing No.104 of 10.12.2014 titled as “Gamdoor Singh Chala Vs. Tara Singh and others” and 105 of 15.12.2014 titled as “Balwant Singh and others Vs. Tara Singh and others” whereby the lower Appellate Court while affirming the finding rendered by the trial Court, dismissed both the appeals.

Mr. Paramjit Batta, learned counsel appearing on behalf of the appellants in both the appeals submitted that the judgment and decree dated 30.04.1957 was passed at their back and had no knowledge about the same.

Therefore, it would affect the rights of the appellants-defendants. Waryam

Singh died on 16.08.2008. The trial Court had taken up issues No.1, 2, 3, 5, 6 and 10 together, which were decided in favour of the plaintiff but the issue No.4 pertaining to mesne profits was decided against the plaintiff and in favour of the defendants, in essence, the relief of mesne profits was declined. The moot point involved in the present case is identity of the land owned by the forefather of the plaintiff. Both the Courts below miserably failed to appreciate whether the suit land allegedly claimed by the plaintiff was the one and the same as owned by Bhola Singh, which devolved upon Waryam Singh. When the Civil Suit bearing No.143 dated 09.08.1955 was filed at that time the village of the respondent-plaintiff was in District Amargarh of Pepsu State. Therefore, the application for placing on record the additional evidence was filed basically to prove that the suit property was different property than the one projected by the respondent-plaintiff.

The land in Mutation No.113 was in fact owned by Puran Singh and Bhola Singh was never the owner of the land. Both the Courts below did not appreciate the aforementioned fact and erroneously failed to notice that the plaintiff in the instant suit and in the suit bearing No.143 of 1955 wrongly claimed himself owner of the suit land. Customary law prohibited the alienation of the ancestral property by the owner without there being any legal necessity. The lower Appellate Court being last court of fact and law was enjoined upon an obligation to deal with all the aspects of the matter and having failed to do so, there is illegality and perversity. Even proper issues were not framed with regard to previous decrees, thus, the genesis of the suit itself was a nullity. Therefore, the appeal involves substantial questions of law for determination by this Court as drawn in the memorandum of appeals.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Batta. Nothing prevented the appellant to set a counter-claim by challenging the aforementioned judgment and decree dated 16.04.1958. The revenue record brought on record clearly established the old khasra number and new khasra numbers. Waryam Singh during his life time had made alienation of the agricultural land as described in the suit and thereafter, Tara Singh son of Waryam Singh challenged the alienation in aforementioned civil suit wherein vide judgment and decree dated 30.04.1957 (Ex.P-10) it was held that he would be protecting his reversionary rights. Even the aforementioned judgment and decree was also assailed by Bahal Singh and Jangir Singh but the lower Appellate Court vide judgment and decree dated 16.04.1958 (Ex.P-35) declared that mortgaged deed dated 11.04.1950 and connected sale for ₹4000/- dated 10.05.1954, sale deed dated 10.02.1951 of 25 bighas 15 biswas out of the subject matter to the mortgage deed dated 10.02.1951 and sale deed dated 06.02.1954 of 10 bighas of land out of 15 bighas 11 biswas would not affect the reversionary rights of the plaintiff.

The suit for possession was filed for re-acquiring the property after death of Waryam Singh, who died on 16.08.2008 vide death certificate Ex.P12. Even the suit filed by Jagjit Pal Singh claiming the right in the property on the basis of the Will did not crystallize to any adjudication as it was dismissed in default on 5.2.2014 and the fact of the matter is that the reversionary rights had already been crystallized vide judgment and decree dated 30.04.1957 and 16.04.1958.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the trial Court and the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 08, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No