

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3019 of 2017 (O&M)
Date of decision: 11.07.2018.

Om Parkash

...Appellant

Versus

Ajeet Singh

....Respondent

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ramesh Malik, Advocate for the appellant.

Mr. R.S. Budhwar, Advocate for the respondent-caveator.

LISA GILL, J. (ORAL)

The appellant is aggrieved of dismissal of his suit vide judgment and decree dated 12.08.2013 passed by Civil Judge (Junior Division), Sonapat as well as judgment and decree dated 08.02.2017 passed by Additional District Judge, Sonapat, whereby appeal by the present appellant was dismissed.

Briefly stated the facts which are necessary for the disposal of this appeal are that the plaintiff/plaintiff filed a suit for declaration to the effect that he is owner in possession of 2 kanals 1 marla of the land situated in the revenue estate of Village Rathdhana, Tehsil and District Sonapat and that the defendant was in possession of a share in excess of that which had fallen to members under the family settlement arrived at in the year 1987.

Consequential relief of permanent injunction against the respondent-defendant was prayed for as well.

It is the pleaded case of the appellant that his father Rai Singh was the owner of agricultural land measuring 202 kanals 10 marlas situated in three different villages. Rai Singh had married thrice. The appellant was born out of the first marriage. One Ajit Singh and a daughter were born out of the second marriage. Out of the third marriage with Sulochana Devi, Parhlad, Krishan and one daughter were born. Rai Singh passed away in the year 1993. A family settlement was arrived at in the year 1987 and the entire property was divided in five equal shares, four shares towards the four brothers and one to the third wife Sulochana Devi. Pursuant to the said oral settlement between the parties, the property came in possession of all the said five persons including the appellant. The appellant was given possession of 37 kanals 12 marlas of land, whereas it is claimed that he is entitled to 40 kanals 10 marlas of the land in question.

It has further been averred that as per the jamabandi, the area reflected is 71 kanals 12 marlas, but, actually, it is 79 kanals 12 marlas. Khewat No.134, Khata No.248, measuring 10 kanals 10 marlas fell to the share of Parhlad & Krishan and further Khewat No.168, Khata Nos.311, 312, measuring 3 kanals 5 marlas also fell to the share of Parhlad and Krishan, thereby total land of Parhlad and Krishan being 93 kanals 14 marlas, subject to its adjustment according to the share/area. Khewat No.12, Khata No.23, measuring 40 kanals situated in village Libaspur, fell to the share of Smt. Sulochana and Khewat No.263, Khata No.390, measuring 18 kanals 8 marlas of village Rathdhana fell to the share of Ajit Singh vide decree dated 04.01.1992 from Rai Singh. 4 kanals 16 marlas land remained in the name of

Ajit Singh, which was purchased in the name of Ajit Singh out of the joint family funds. Ajit Singh transferred 6 kanals 14 marla land to the plaintiff vide decree dated 04.01.1992 and family land left in the name of Om Parkash plaintiff which came in his share. Khewat No.262, Khata Nos.286 to 289, measuring 37 kanals 12 marlas and certain land was transferred by Ajit Singh in favour of Parhlad and Krishan for adjustment of the house that he got. It has further been averred that partition of the house also took place and the plaintiff got the house adjoining to Khem Chand, Lemberdar. The big house (Helli) fell to the share of Ajit Singh, therefore, he had to compensate Prahlad and Ajit Singh out of his share. It is stated that the land in the name of defendant is 42 kanals 1 marla i.e. Khewat No.224, Killa No.58//14(8-0); 98//17(7-12), 23//2(3-12), 24, measuring 26 kanals 8 marlas, situated in village Rathdhana and Khewat No.129, Khata No.244, measuring 10 kanals 17 marlas, situated in village Rai and 4 kanals 16 marlas in Khewat No.251, Khata No.319, 320 and 321, and now land measuring 4 kanals 15 marlas is remaining with the defendant after the sale of land comprised in Khewat No.231, Khata No.319, 320 & 321 and land measuring 4 kanals 18 marlas, situated in village Rathdhana, Tehsil and District Sonipat. It has further been averred that the defendant had to transfer 2 kanals 1 marla land in favour of the plaintiff, but the defendant has not transferred the said land and has been avoiding the transfer on one pretext or the other. He flatly refused to accede to the genuine requests of the plaintiff on 01.08.2007 and also threatened to alienate the same to some other person. Thus the suit was filed by the appellant/plaintiff.

Respondent-defendant contested the suit by specifically taking the ground of non-maintainability of the suit on account of mis-joinder and

non-joinder of necessary parties. It was the specific case of the defendant that he was not having excess land measuring 2 kanals 1 marla, as above. Details of the residential houses falling to the share of the parties was narrated in the written statement as mentioned in para 3 of the judgment and decree dated 12.08.2013 passed by the trial Court which are not being reproduced for the sake of brevity. It was further stated that Smt. Sulochana distributed her entire estate to all the four sons. Two and a half acres of land at Bhatgaon and Rs.75,000/- (market rate of ½ acre) was given to the plaintiff while giving three acres by Smt. Sulochana to the defendant. It was thus prayed that the suit be dismissed.

Replication was filed by the appellant and on the basis of the pleadings, the following issues were framed by the learned trial Court: -

- 1) Whether the plaintiff is owner in possession of the suit land?OPP
- 2) Whether the plaintiff is entitled to a decree for permanent injunction to restrain the defendant from alienating the suit land?OPP
- 3) Whether suit of the plaintiff is not maintainable in the present form?OPD
- 4) Whether the plaintiff has no cause of action and no locus-standi to file the present suit?OPD
- 5) Whether suit of the plaintiff is bad for non-joinder of necessary parties?OPD
- 6) Whether the plaintiff has not affixed the proper court fee on the plaint?OPD
- 7) Relief.”

Learned trial Court on considering the facts and circumstances of the case dismissed the suit filed by the appellant-plaintiff on 12.08.2013. It

is, inter-alia, observed that the persons who were a part of the family settlement were not impleaded as a party. Legal heirs of Rai Singh were necessary parties to the suit but were not impleaded. It was further observed that the appellant failed to prove that the defendant-respondent was having land measuring 2 kanals 1 marla in excess of his share as per family settlement.

Appeal preferred by the appellant impugning judgment and decree dated 12.08.2013 was dismissed by the Additional District Judge vide impugned judgment and decree dated 08.02.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant has vehemently argued that both the learned courts below have erred in holding the suit bad for non-joinder of legal heirs of Rai Singh. It is submitted that no relief has been claimed from any of the other legal heirs. Therefore, there is no necessity of impleading them as party to the suit. It is further urged that defendant has admitted the family settlement. Therefore, once having admitted the family settlement of partition of the entire property in equal shares, the same should be honoured. In this situation, suit filed by the appellant-plaintiff should have been decreed and defendant-respondent directed to transfer the excess land of 2 kanals 1 marla in his possession to the plaintiff-appellant. It is thus prayed that the appeal be allowed, impugned judgments and decrees be set aside and consequently the suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and respondent/caveator. File has been perused.

Relationship between the parties is not in dispute. Learned trial Court observed that the plaintiff, while appearing as PW1, admitted that apart from four sons and one widow, Rai Singh had two daughters but they have not been impleaded. Moreover, the circumstances and manner of the distribution of the three residential properties is not revealed amongst the family members. Sisters of the appellant were not even present at the time of family settlement. PW2 Zile Singh expressed his ignorance about the terms and conditions etc. of the family settlement alleged to have been arrived at. Learned Additional District Judge, Sonapat affirmed the trial Court verdict while holding that the appellant could not prove the terms and conditions of the family settlement. It could not be proved that the defendant was having excess land of 2 kanals 1 marla in his possession. Learned Additional District Judge, Sonapat has specifically observed as under: -

“It is apparent from para No.3 and 4 of plaint that there is contradictions about total land in the name of plaintiff and defendant. Further as per own case of plaintiff as pleaded in para No.3 that after partition of land in family settlement total land of Prahlad and Krishan comes to 93 kanal and 14 marla. However, total share of Prahlad and Krishan is 80 kanal. Why they got 13 kanal 14 marla land more than their share? How much land was transferred by defendant Ajeet in the name of Prahlad and Krishan in lieu of haveli? There is no explanation put forward by plaintiff.

It is also not clear from para No.3 and para No.4 of the plaint as to how much land came in the share of defendant. It is also not clear as to why defendant transferred land measuring 6 kanal 14 marla in the name of plaintiff vide decree dated 04.01.1992.”

I do not find any merit in the argument raised by learned counsel for the appellant that once the family settlement was admitted by the defendant, the same should have been honoured and the defendant-respondent should transfer the excess land of 2 kanals 1 marla in favour of the plaintiff-appellant. An extremely simplistic argument has been raised that the land holding should be divided in equal shares as per the said family settlement. Though attractive at first flush, the argument is devoid of any merit. It was for the appellant-plaintiff to have led specific evidence on record to prove that the defendant-respondent had got land in excess to that of his share. It is not in dispute that certain transfers have been effected in lieu of certain properties but a perusal of the file reveals that no explanation is indeed forth coming from the appellant. Learned counsel for the appellant is unable to point out any such evidence on record which proves that the respondent is in possession of land in excess of his share to which the appellant is entitled.

No other argument has been raised. Concurrent findings of fact have been returned by both the learned Courts below on a comprehensive evaluation of the evidence on record. In my considered opinion, there is no question of law much less a substantial question of law involved in this appeal which calls for any interference by this Court.

In view of the aforementioned, this appeal being devoid of merit, is dismissed with no order as to costs.

(LISA GILL)
JUDGE

July 11, 2018

Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No