

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

RSA No.3046 of 2018(O&M)

Date of Decision:05.12.2018

Rajwinder Kaur and another

.....APPELLANTS

Vs.

Banta Singh and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Harsh Bunger, Advocate for the appellants.

DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the appellants and perused the records of the case.

This appeal is directed against the judgment and decree dated 12.12.2017 passed by learned Addl. District Judge, Jalandhar passed in Case No.CA 308-2017, by which he has affirmed the judgment and decree dated 19.02.2014 passed in Civil Suit No.78 of 2007 by learned Civil Judge (Sr. Division), Jalandhar, by which he has decreed the suit in favour of plaintiffs No. 2 to 6 and defendants No. 10 to 12 holding that they are joint owner in possession of land in question.

Defendants No. 1 to 9 have perpetually restrained from alienating the suit property in any manner. It has further been held that mutation No.2707 sanctioned by AC IInd Grade, Jalandhar is illegal and the result of misrepresentation and, thus, the same has been set aside.

The appellants have challenged the judgment and decree passed by the trial Court also.

The case of the plaintiffs-respondents is that the property in dispute was originally owned by one Bawa Singh son of Banta Singh, who died on 27.05.1996, leaving behind his two sons, namely, Makhan Singh and Gurnam Singh. The daughter, namely, Surjit Kaur @ Shinder Kaur, who was married with plaintiff No.1 Sh. Banta Singh, had died about 14 years prior to the death of her father Bawa Singh, and is survived by the plaintiffs and defendants No. 10 to 12 as her legal representatives. Further case of the of the plaintiffs-respondents is that the suit property was to be divided in three equal shares, i.e. 1/3rd share each to Makhan Singh, Gurnam Singh and heirs of Surjit Kaur, as per the order of succession being Class-I heirs of Bawa Singh but Makhan Singh and Gurnam Singh, in order to usurp the share of the plaintiffs and defendants No. 10 to 12, by concealing the fact that Surjit Kaur was the daughter of late Bawa Singh, got sanctioned the mutation of land in their name and after the death of Makhan Singh, his legal heirs, i.e. defendants No. 2 to 5 got entered mutation in their name of the share of Makhan Singh.

It is further alleged that defendants No. 1 to 9 are now threatening to alienate the suit property and are in negotiations with certain persons and are also trying to take forcible possession from the plaintiffs. Hence, the Civil Suit was filed by the plaintiffs.

Summons were issued and some of the legal representatives of the deceased defendant No.1 appeared and filed written statement, taking preliminary objections regarding maintainability of the suit and also that suit is barred by the act and conduct of plaintiffs, who has no *locus standi* to file the present suit which is also bad for non-joinder and misjoinder of necessary parties and that plaint is liable to be rejected under Order 7 Rule 1(J) and 11 of the Code of Civil Procedure.

On merit, it has been averred that Bawa Singh was the owner of the suit property, who died on 27.05.1996 and was survived by his two sons, namely, Makhan Singh and Gurnam Singh being Class-I heirs under the Hindu Succession Act, 1956 and, thus, said mutation No. 2710 is rightly sanctioned on 09.09.1996, which was well within the knowledge of plaintiffs but no objection was ever raised. Makhan Singh and Gurnam Singh remained owner in possession of the suit property during their lifetime. The LRs of defendant No.1 admitted that Bawa Singh was having two sons, namely, Makhan Singh and Gurnam Singh and denied that Surjit Kaur was the daughter of Bawa Singh.

Defendants No. 4 and 5 also filed their separate written statements whereby they have taken the similar preliminary objections as taken by defendant No.1. However, they have admitted that Surjit Kaur was the daughter of Bawa Singh and she was married with Banta Singh and had died about 14 years back. It is also stated in their written statement that Surjit Kaur was earlier married with one Piara Singh. However, the mutation in favour of Makhan Singh and Gurnam Singh in respect of the property of Bawa Singh has been justified by them having been rightly sanctioned as the plaintiffs neither challenged the said mutation before the appropriate authority nor have they filed any appeal before any Revenue Court assailing same.

Remaining defendants were proceeded *ex parte*.

On the basis of the pleadings of the rival parties, the trial Court framed following issues:-

- “1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiff has not come to the court with clean

hands?

5. *Whether the suit is hopelessly time barred? OPD*

6. *Whether the present suit is bad for non-joinder and misjoinder of necessary parties? OPD*

7. *Whether the suit has not been filed as per the amended provisions of CPC? OPD*

8. *Whether the suit has been filed without any cause of action and plaintiff has got no locus standi to file the present suit? OPD*

9. *Relief.”*

The trial Court recorded finding in favour of the plaintiffs on almost issues. However, so far as issue No.1 is concerned, it has been held that plaintiff No.1-Banta Singh, not being a Class-I legal heir of his deceased wife Surjit Kaur, would not get a share out of her property but other plaintiffs No. 2 to 6 as well defendants No. 10 to 12 are joint owner in possession of land measuring 24 kanalas 1 marla out of the total share of Surjit Kaur which is 1/3rd of the total land of late Bawa Singh measuring an area of 72 kanals and 03 marlas being Class-1 heir.

Before coming to such conclusion, the trial Court also held that Surjit Kaur was the daughter of late Bawa Singh.

The Appellate Court has also affirmed the views expressed by the trial Court.

Learned counsel appearing for the appellants raised diverse issues in an endeavour to impress upon this Court that Surjit Kaur cannot be considered to be a daughter of Bawa Singh as none of her sons and daughter being plaintiffs had courage to produce themselves in the witness box so that they could be cross-examined on the issue. It is contended that it is only the evidence of Banta Singh, i.e. plaintiff No.1, upon testimony of whom both the Courts below have placed reliance, whereas at the same time, both the Courts

below have not found plaintiff No.1 to be entitled for any share out of the property of Surjit Kaur.

However, this issue has been dealt with by the trial Court as well as Appellate Court in detail. Though, it is admitted position that plaintiffs No. 2 to 6 did not examine themselves as witness but at the same time, some of the contesting defendants in their written statement have admitted the fact that Surjit Kaur was the daughter of Bawa Singh and plaintiffs No. 2 to 6 are her sons and daughters. This admission by the defendants would have to be taken as best piece of evidence and for admitted fact, there was no requirement for adducing further evidence. They have also admitted that Banta Singh was the husband of Surjit Kaur. In such a situation, the testimony of Banta Singh becomes of much relevance on the aforesaid issue.

Learned counsel has also submitted that plaintiffs No. 2 to 6 were involved in the murder of Surjit Kaur and, thus, they would not be entitled to inherit her estate in terms of the provisions of Section 25 of the Hindu Succession Act, 1956.

However, this limb of arguments also does not have any leg to stand inasmuch as the trial Court has found that there is nothing on record to prove the aforesaid fact that plaintiffs No. 2 to 6 have been found guilty of committing murder of their mother. In fact, no such evidence has been adduced. Thus, the trial Court has rightly rejected such argument being merely an afterthought aimed at defeating the rights of plaintiffs No 2 to 6 and defendants No. 10 to 12.

Having held so and having also found that the mutation done in favour of Gurnam Singh and Makhan Singh is not as per law and is liable to be set aside, the trial Court has decreed the suit in the manner which has been

discussed above and also restraining the defendants No. 1 to 9 perpetually from alienating the suit property in any manner.

All the issues stand concluded by concurrent finding recorded by the trial Court and the Lower Appellate Court and learned counsel for the appellants has miserably failed in raising any ground questioning the veracity of the findings recorded by the Courts below.

In the result, this appeal fails and the same is, accordingly, dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

05.12.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No