

(119) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4365 of 2017 (O&M)

Date of decision: 12.09.2018

Chhota Singh.

... Appellant

Versus

Jagsir Singh (Deceased) through LRs.

... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sandeep Punchhi, Advocate for the appellant.

B.S. Walia, J. (Oral)

[1] Appeal has been filed by the appellant/plaintiff against the judgment and decree dated 31.10.2013 passed by the learned Civil Judge (Sr. Div.), Sirsa as upheld by the judgment and decree dated 23.03.2017 passed by the learned Additional District Judge, Sirsa dismissing the suit.

[2] Payer in the aforesaid suit was for declaration to the effect that the plaintiff was owner in possession vide registered sale deed dated 27.06.1997 of land comprised in Sq. No.114 Killa No.11 (8-0), 18 (8-0), 19 (7-12), 20 (8-0), total 31 Kanal 12 Marlas as recorded in Jamabandi 2007-08, situated in village Rori Sub Tehsil, Kalanwali, District Sirsa and the revenue record since mutation No.9955 and Jamabandi 2007-08 liable to be corrected under Section 45 of the Punjab Land Revenue Act, 1881 in favour of plaintiff and judgment and decree dated 12.03.2009 passed by the learned Additional District Judge, Sirsa in civil appeal

No.10 CA of 2005 was ineffective, inoperative and liable to be ignored regarding suit land as per judgment of this Court dated 17.09.1979 and as a consequential relief mandatory injunction directing defendant No.6 to enter attestation of mutation of sale deed and permanent injunction be also granted, restraining defendant Nos.4 and 5 to take possession in any manner, as the suit land was not included in the decree in their favour on the basis of evidence of every description, oral and documentary.

[3] Brief facts of the case leading to the filing of the instant appeal are that the appellant/plaintiff purchased 31 kanals 12 marlas of land as described in the head-note of the plaint after paying full consideration on 27.06.1997 to Jagsir Singh and Darshan Singh sons of one Banta Singh adopted son of Jaggar Singh and real son of Sher Singh.

[4] Jaggar Singh son of Pakhar Singh was owner of about 70 bighas of land and he adopted Banta Singh father of respondent Nos.1 and 2. Jaggar Singh transferred 40 bighas of land in favour of Banta Singh vide gift deed dated 03.08.1956 and died on 17.04.1957 due to injuries allegedly caused by Banta Singh and his natural father Sher Singh eventually leading to their conviction for murdering Jaggar Singh. Thereafter, in terms of the provisions of the Hindu Succession Act, 1956 (for short 'the Act') the revenue authorities mutated 28 bighas 20 biswas of land (i.e. approximately 195 kanals 19 marlas) in favour of Biro and Parsani, real sisters of Jaggar Singh vide mutation entered on 14.09.1957 and sanctioned on 16.06.1962.

[5] Aggrieved against the mutation sanctioned by the revenue authorities in favour of Biro and Parsani, Banta Singh filed civil suit No.246 of 1964 challenging mutation dated 16.06.1962 claiming himself

to be the owner of aforesaid land measuring 195 kanals 19 marlas. However, the suit filed by Banta Singh was dismissed on 02.07.1966 and his adoption was also declared to be null and void, besides, he was debarred from inheriting the property of Jaggar Singh under Section 25 of the Act (ibid). However, appeal filed by Banta Singh was accepted by the learned 1st Appellate Court on 01.05.1968. Thereafter, during consolidation proceedings Banta Singh was allotted land measuring 512 kanals 9 marlas in lieu of 70 bighas of land held by Jaggar Singh. In the meantime, the appeal filed by Biro and Parsani against the decision of the learned 1st Appellate Court dated 01.05.1968 in favour of Banta Singh was accepted by this Court on 17.09.1979 setting aside the judgment and decree dated 01.05.1968 of the learned 1st Appellate Court and upholding the judgment and decree dated 2.07.1966 passed by the learned trial Court. However, Banta Singh after the decision of this Court mischievously transferred 200 kanals of land to which he had succeeded from Jaggar Singh by way of Civil Court decree dated 07.03.1983 in favour of his brother and respondent Nos.1 and 2 i.e. sons. Besides, he also sold land to different persons by different sale deeds.

[6] Biro, sister of Jaggar Singh again filed a suit in the year 2005 challenging the decree and sale deeds executed by Banta Singh on the ground that the same was not binding on her as the same was hit by the provisions of Section 25 of the Act (ibid), besides, the sale deeds/transfers had been made during the pendency of the Regular Second Appeal filed against the decision of the learned 1st Appellate Court dated 01.05.1968 reversing the judgment and decree dated 02.07.1966 of the learned trial Court.

[7] Aggrieved against the judgment and decree dated 29.01.2005, Smt. Biro filed an appeal before the learned District Judge and the learned Additional District Judge vide his judgment and decree dated 12.03.2009 set aside the judgment and decree dismissing the civil suit vide order dated 29.01.2005 on the ground that Banta Singh had mischievously transferred major portion of the land which he had succeeded from Jaggar Singh in favour of his brother and sons, besides, to different people, knowing fully well that appeal had been filed against the judgment and decree passed by the learned Additional District Judge, Hisar. The learned Additional District Judge, Hisar also held that the transactions by Banta Singh during the pendency of the appeal were hit by the doctrine of *lis pendens*. Appeal filed by Banta Singh against the judgment and decree dated 12.03.2009 passed by the learned Additional District Judge, Hisar was dismissed by this Court vide judgment dated 16.12.2016 in RSA No.3783 of 2009 wherein it was held that Banta Singh was not entitled to inherit any land from his father Jaggar Singh.

[8] In the aforementioned background, claim of the appellant/plaintiff in the civil suit filed by him was that he had purchased land from Jagsir Singh and Darshan Singh sons of Banta Singh on 27.06.1997 after paying full consideration and that ever since purchase of the land in question i.e. 31 kanals 12 marals, he was in possession of the same as owner. It was also claimed that 31 kanals 12 marlas of land purchased by him was not part of the judgment dated 17.09.1979 of this Court in favour of Biro and Parsani. The suit filed by the appellant/plaintiff was contested by respondent/defendant Nos.4 and 5 i.e. Biro and Parsani on the ground that the transfer in favour of the

appellant/plaintiff by respondent/defendant Nos.1 and 2 i.e. Jagsir Singh and Darshan Singh was not a bona fide transfer and that they had no right to sell the land in question in view of order dated 12.03.2009 passed by the learned Additional District Judge, Hisar, besides, the same was also hit by the principles of *lis pendens* as also in view of the decision of this Court dated 16.12.2016 in RSA No.3783 of 2009 holding that Banta Singh was not entitled to inherit any land from his father Jaggar Singh.

[9] In the aforementioned background the sole argument of learned counsel for the appellant/plaintiff is that the land had been purchased from respondent/defendant Nos.1 and 2 Jagsir Singh and Darshan Singh sons of Banta Singh and since the land was entered in the revenue record in their names, therefore, the appellant/plaintiff had no reason to doubt the ownership of the land sold by respondent Nos.1 & 2.

[10] I have considered the submissions of learned counsel for the appellant. Admittedly, the appellant/plaintiff had purchased the property in question vide Ex.PW-1/A during pendency of Civil Suit No.704 of 1987 in case titled as Biro vs. Banta Singh and others which was decided on 29.01.2005 whereby the suit was dismissed. However, appeal in respect thereto filed by Biro was decided vide Ex.P16 on 12.03.2009 by the learned Additional District Judge, Hisar. Thus, the appellant/plaintiff purchased the suit land during the pendency of the litigation. Therefore, the sale deed Ex.PW-1/A in favour of the appellant/plaintiff is hit by the doctrine of *lis pendens* as contained in Section 52 of the Transfer of Property Act, 1882.

[11] Banta Singh filed RSA No.3783 of 2009 against the judgment and decree dated 12.03.2009 passed by the learned Additional

District Judge, Hisar in respect of suit filed by Biro, sister of Jaggar Singh in respect of land measuring 254 kanals 9 marlas including the property which is in issue in the present proceedings i.e. 31 kanals 12 marals. This Court in RSA No.3783 of 2009 vide its judgment dated 16.12.2016 held that there had already been litigation upto this Court in the year 1979 wherein in the suit filed by Smt. Biro and her sister Parsani they had been declared to be owners in respect of land measuring 195 kanals 19 marlas.

[12] On query, learned counsel for the appellant frankly conceded that there was no evidence on record that transfer of about 40 bighas of land in favour of Banta Singh was made vide gift deed dated 03.08.1956 therefore, it was not possible to co-relate the land in dispute with the aforementioned land so as to show that the land purchased by the appellant/plaintiff from Jagsir Singh and Darshan Singh was part of the land which was gifted by Jaggar Singh to Banta Singh vide alleged gift deed dated 03.08.1956, besides, Banta Singh was not entitled to inherit any land from his father Jaggar Singh. Thus, neither Banta Singh is shown to be the owner of property in question by way of inheritance nor is there any evidence on record to show that the land in question was gifted to him allegedly vide gift deed dated 03.08.1956. Thus, LRs i.e. Jagsir Singh and Darshan Singh were not having any right to alienate the suit land vide Ex.PW-1/A in favour of the appellant/plaintiff.

[13] The nail in the claim of the appellant stands hammered by the fact that it is the admitted position that the land was transferred by Banta Singh in favour of his sons Jagsir Singh and Darshan Singh i.e. respondent Nos.1 and 2 by way of the judgment suffered in a civil suit

after the decision of this Court on 17.09.1979 setting aside the judgment and decree dated 01.05.1968 passed by the learned Additional District Judge and upholding the judgment and decree dated 02.07.1966 in which it had been held that adoption of Banta Singh was null and void and he was debarred from inheriting the property of Jaggar Singh under Section 25 of the Act (ibid).

[14] In the light of the position as noted above, I do not find any infirmity with the well reasoned judgments passed by the learned Courts below. No substantial question of law arises for consideration in this appeal. Accordingly, finding no merit in the Regular Second Appeal, the same is dismissed in limine.

12.09.2018
amit

(B.S. Walia)
Judge

1. Whether speaking/reasoned

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Yes/No.
2. Whether reportable

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Yes/No