

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

RSA No. 830 of 2018(O&M)

Date of decision: 23.2.2018

Kuldip Singh

....Appellant

VERSUS

Nirmal Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Mehndiratta, Advocate for the appellant.

REKHA MITTAL, J.

CM No.3047 of 2018

Heard.

Allowed as prayed for.

Annexures A-1 to A-3 (Ex.P1, D2 and D3) are taken on record subject to just exceptions.

Disposed of accordingly.

RSA No.830 of 2018

Challenge in the present appeal has been directed against consistent findings recorded by the Courts below whereby suit for permanent injunction restraining the defendants from interfering into cultivating possession of the appellants/plaintiffs regarding land measuring 95 kanal 2 marla detailed in head-note of the plaint was dismissed vide judgment and decree dated 01.08.2017 passed by the trial Court and findings recorded by the trial Court were affirmed in appeal by the

Additional District Judge, Gurdaspur on 28.10.2017.

In short, the appellant along with his brother Karamjit Singh (co-plaintiff) staked his claim for grant of injunction on the premise that previously, Harbans Singh son of Dhian Singh, father of the plaintiffs was in cultivating possession of suit land for the past more than 20 years over arazi gair mazrua and after his death, the plaintiffs are in cultivating possession of the suit land. The respondents/defendants have got no right, title or interest in the suit land and they without impleading the plaintiffs as party got the entries of khasra girdawris corrected in their names with connivance of the Tehsildar, Gurdaspur vide order dated 29.03.2011 which is illegal, void, non-speaking and against principle of natural justice. The revision against the said order filed by the plaintiffs is pending in the Court of Commissioner, Jalandhar Division, Jalandhar.

The respondents/defendants filed written statement raising preliminary objections inter alia locus standi of the plaintiffs to file the suit, non-maintainability of the suit and the plaintiffs having not come to the Court with clean hands. It is averred that Harbans Singh surrendered possession of the suit land vide document dated 13.01.2005 in favour of Amrik Singh and his sons and the said document was attested by Kuldeep Singh – plaintiff No.1. Amrik Singh etc. sold out their possessory rights to the answering defendants for consideration of Rs.31 lakh and delivered possession in their favour and agreement was reduced into writing on 04.03.2010. They are in cultivating possession of the suit land under the State of Punjab, owner of the land in question. The Khasra girdawri entries were corrected as per the factual position on the basis of application filed by the defendants vide order dated 02.03.2010 and the appeal preferred by Karamjit Singh was dismissed on 04.10.2010. The defendants again filed another application for correction of Khasra girdawris which

was allowed by A.C. 2nd Grade, Gurdaspur vide order dated 29.03.2011 and appeal filed by the plaintiffs against the said order was dismissed by the Collector, Gurdaspur vide order dated 03.10.2011 and revision is pending before the Court of Commissioner, Jalandhar Division, Jalandhar. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed issues reproduced in para 13 of the judgment passed by the trial Court. After having heard counsel for the parties in the light of materials on record, trial Court non-suited claim of the plaintiffs/appellant on the basis of findings that in the jamabandi Ex.P1 for the year 2007-08, land comprising Khasra Numbers i.e. Rect. No.4//4 (Min East 5-0), 25(8-0), Rect. No.5//21 (8-0), 22 (6-8), Rect. No.6//10 (8-0), 11/1 (4-13), Rect. No.7//3 Min North (4-6), Rect. No.7//4 Min East (6-3), Rect. No.7//6 (8-0) measuring 54 kanal 17 marlas is not recorded to be in possession of Harbans Singh, father of the plaintiffs or the plaintiffs, therefore, they are not entitled to seek injunction qua these Khasra numbers.

With regard to possession of land comprised in Rect. No.6 Killa No.1 (8-0), 2(6-2), 9 (6-6), 12/1 (3-15), Rect. No.7 Killa No.5 (8-0), 15/1 (4-13) along with some other land, the same was stated to be transferred by Harbans Singh to Amrik Singh and others as Kuldeep Singh PW-1 had admitted writing dated 13.01.2005 Ex.D2.

As has been noticed hereinbefore, findings recorded by the trial Court were affirmed in appeal without any variance, as such, the plaintiffs remained unsuccessful before the first Appellate Court.

The sole submission made by counsel for the appellant is that the documents Ex.D2 (Annexure A-2) whereby possessory rights in land

measuring 98 kanals 19 marlas including part of the suit land were purported to be surrendered by Harbans Singh in favour of Amrik Singh and others is not admissible in evidence for want of registration and payment of stamp duty. Similar contention has been raised with regard to admissibility of document Ex.D3 (Annexure A-3) purported to be executed by Amrik Singh etc. in favour of the respondents/defendants with regard to transfer of possessory rights in land, subject matter of agreement Ex.D3. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others, 2015(16) SCC 787**. Reference has also been made to judgment of the Orissa High Court **Abani Kumar Meher and others Vs. District Collector, Bargarh and others, AIR 2017 Orissa 100**. However, counsel has fairly conceded that he cannot successfully assail findings of the Courts in regard to non-suiting claim of the appellant/plaintiffs qua land measuring 54 kanal 17 marlas comprising Khasra numbers detailed in para 36 of the judgment of the trial Court.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts and testimony of Kuldeep Singh – plaintiff PW-1 made available during the course of hearing.

Counsel for the appellant has not assailed findings of the Courts with regard to the plaintiffs being not entitled to get injunction in respect of land measuring 54 kanals 17 marlas as land comprising Khasra numbers detailed in para 36 of the judgment of the trial Court does not find reference in the jamabandi Ex.P1, relied upon by the plaintiffs for proving their possession over the suit land.

The question for consideration is whether the Courts have wrongly non-suited claim of the plaintiffs for injunction in respect of

remaining land, out of land measuring 95 kanal 2 marlas by relying upon documents Ex.D2 and D3. Indisputably, the respondents/defendants have raised a plea that possession of part of the suit land was delivered by Harbans Singh father of the plaintiffs in favour of Amrik Singh and others vide writing dated 13.01.2005 and later Amrik Singh and others surrendered possession of said land in favour of the respondents/defendants vide agreement dated 04.03.2010 and received an amount of Rs.31 lakhs in this regard.

Kuldeep Singh, one of the plaintiffs appeared in the witness box to establish plea of the plaintiffs with regard to suit land being in their cultivating possession since the times of their father Sh. Harbans Singh. He has reiterated the version given in the plaint by way of his affidavit tendered into evidence by way of examination in chief. However, in his cross examination, he has admitted the correctness of agreement dated 13.1.2005 and accepted it correct that the same was signed by him as an attesting witness and was executed by his father in favour of Amrik Singh son of Teja Singh, Gurpal Singh, Jagtar Singh sons of Amrik Singh. He has further admitted that the document was thumb marked by his father and attested by Fateh Singh, Member Panchayat. He has further admitted correctness of document Ex.D2 whereby Amrik Singh and others surrendered possession in favour of the respondents/defendants. Not only this, he has also admitted that land was given to Amrik Singh and his sons for the purpose of cultivation and later Amrik Singh etc. in place of returning possession of the land to them had given the same to Nirmal Singh – defendant. As soon as Kuldeep Singh – plaintiff/appellant has admitted the factum that possession of land was delivered by his father in favour of Amrik Singh and others, plea of the plaintiffs that they are in

possession of land apart from land measuring 54 kanal 17 marlas discussed hereinbefore becomes patently false disentitling the plaintiffs to seek discretionary and equitable relief of injunction. Under the circumstances, contention with regard to non-admissibility or otherwise of documents Ex.D1 & D2 loses its relevance. Hon'ble the Supreme Court in **Yellapu Uma Maheswari and another case** (supra) while dealing with the question of admissibility of documents marked as Ex.B-21 and B-22 has held in para 16, quoted thus:-

“16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy Vs. Chinnappareddigari Vankata Reddy, AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant/defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance.”

A careful reading of the aforesaid extract makes it evident that the documents in question before Hon'ble the Supreme Court were held to be inadmissible for the primary purpose i.e. division of joint properties by metes and bounds but the same can be relied upon for collateral purpose

i.e. severancy of title, nature of possession of various shares. It has further been held that if the appellant/defendant wants to mark these documents for collateral purpose, it is open for them to pay the stamp duty together with penalty and get the documents impounded with liberty to the trial Court to mark Ex.B-21 and B-22 for collateral purpose subject to proof and relevance. The judgment rather goes against the appellant that the documents in question can be looked into for collateral purpose to see nature of possession.

So far as the plea that the documents cannot be looked into for want of stamp duty, the appellant is not permitted to raise this issue in second appeal as he did not raise this issue at the time when the documents were marked as exhibits by invoking Section 35 of the Indian Stamp Act, 1899. As per the settled position in law, once the document has been marked as an exhibit without an objection by the contesting party with regard to insufficient stamp, the same is not amenable to be raised even at the time of final disposal of the suit much less before the Court in appeal. In this view of the matter, contention raised by counsel for the appellant that documents Ex.D1 and D2 could not be taken into consideration to examine nature of possession either for want of registration or payment of stamp duty is not meritorious and ordered to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

FEBRUARY 23, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no