

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

RSA No.1948 of 1986 (O&M)

Date of decision: 21.02.2019

Sona Devi (deceased) through LRs

... Appellant

Vs.

Jai Ram (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shailendra Sharma, Advocate
for the appellant.

Mr. R.P.S.Ahluwalia, Advocate
for the respondents.

AMIT RAWAL J.

The present Regular Second Appeal at the instance of the appellant-plaintiff, who was successful before the trial Court in claiming declaration of ownership of land measuring 68 kanals 2 marlas situated in village Nagawan, H.B. No.122, Tehshil Naraingarh, District Ambala is directed against the judgment and decree dated 29.03.1986 of the Lower Appellate Court which reversed the findings, in essence, suit of the appellant-plaintiff, has been dismissed.

The plaintiff instituted the suit on 04.10.1978 claiming declaration to be owner in possession in her own right of land bearing khewat/khatauni no.119/168, 169, 227 min mustail nos.42/27, 50/26/2, 30/11/11, 12/2, 20/1, 19/2, 10/9, 11/9, 4.14, 7-5, 3.2, 2-16, 8/2, 9, 35/10/1, 11/2, 12/1 total measuring 5.06, 8-0, 7-8, 3-10, 3-13, 68 kanals 2 marlas

situated in the aforementioned village.

It was alleged that Chamela was owner in possession of an agricultural land measuring 98 kanals 18 marlas being proprietor of the village Magwal. In addition to the aforementioned property, he had also share in the shamlat land. On death of Chamela, the land measuring 98 kanals 18 marlas was inherited by Ramela and Taloki being son and daughter and accordingly, mutation of inheritance was sanctioned in their favour. Taloki died issueless, in essence, he did not leave any legal heir but according to the averments, defendant no.1 claiming herself to be daughter obtained the sanction of inheritance of Taloki on the basis of the Will. The plaintiff instituted a civil suit bearing No.538 titled as “Sona Devi Vs. Mangati”, wherein, compromise dated 21.12.1973, Ex.P1 was effected on receipt of Rs.7,000/- being subject matter of the land (civil suit no.538) and mutation bearing No.498 dated 11.07.1975 in respect of land measuring 98 kanals 18 marlas was sanctioned in favour of the plaintiff.

It was asserted that defendant no.1 managed to get ½ share of shamlat land which came to the share of Chamela (deceased) and entered in the revenue record. Half share of shamlat land aforementioned was sold to defendant no.2, vide registered sale deed dated 22.6.1978 and mutation was sanctioned on 14.07.1978. Defendant no.2 submitted an application for partition of the land and possession. It is in these circumstance, cause of action accrued to file the suit.

Defendant no.1 despite service did not appear, whereas, subsequent vendee, defendant no.2 opposed the suit and supported the sale

deed being bonafide purchaser. It was explained that compromise decree could not have been looked into as the subject matter of land i.e. 68 kanals 2 marlas was not in consideration or part of the suit property in the previous suit, thus, the plaintiff could not assert any right. The land in dispute in the present suit was acquired on the basis of the partition, post compromise.

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

- “1. Whether plaintiff is grand daughter of Chamela?*
- 2. Whether plaintiff is owner and in possession of the suit property as alleged?*
- 3. Whether judgment and decree dated 21.12.1973 passed by Senior Sub Judge, Ambala is collusive, fraudulent and invalid etc., as alleged and if so, its effect?*
- 4. Whether defendant is a bonafide purchaser for consideration and protected under Section 41 of the Transfer of Property Act and if so its effect?*
- 5. Whether the suit is not maintainable in the present form?*
- 6. Whether partition proceedings are ineffective and not binding upon the defendant?*
- 7. Whether plaintiff is estopped by her own act and conduct?*
- 8. Whether the suit is barred under Order 2 Rule 2 CPC as alleged by defendant no.2?*
- 9. Whether defendants are entitled to special costs under*

*Section 35-A CPC?**10. Relief.”*

The plaintiff in support of the aforementioned pleadings brought on record Ex.P1 to Ex.P10, whereas, the defendants Ex.D1 to Ex.D6. The trial Court on the basis of evidence decreed the suit but the Lower Appellate Court reversed the findings as noticed above.

Mr.Shailendra Sharma, learned counsel for the appellant-plaintiff submitted that Mangti did not have any right in the property in view of the compromise dated 21.12.1973 as the appellant-plaintiff had become the exclusive owner of entire ancestral land left by Chamela. Once defendants had extinguished the right of proprietorship in favour of Taloki, for all intents and purposes the right derived in view of the partition of shamlat deh could not confer the title. The compromise did not require any registration as the expression used in the compromise was “entire land”. Mangati could not acquire any share in the shamlat land until she owned any right independently. In the absence of right of proprietorship in the village, the share in the partition could not vest in her. Only the proprietors of the village were entitled to the share in the shamlat land which would be subservant to the proprietary holding and thus, urged this Court for setting aside the judgment and decree of the Lower Appellate Court.

Mr. R.P.S.Ahluwalia, learned counsel appearing on behalf of the respondents submitted that defendant no.2 is a bonafide purchaser for valuable consideration as on account of the vesting of the property in dispute which was not subject matter of the compromise, defendant no.1

acquired the right by way of mutation and after verifying the mutation, purchased the land. If at all, the plaintiff was so wise or had contemplated regarding partition of shamlat deh, the said fact could have been mentioned in the compromise. The compromise pertained to the suit land measuring 98 kanals 18 marlas and not 68 kanals 2 marlas. The order of partition was passed on 28.8.1975, Ex.P9. The Lower Appellate being the last Court of fact and law examined the entire evidence while setting aside the findings by giving cogent reasons and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following substantial questions of law arise for adjudication of the present appeal:-

- “1. Whether defendant no.1 could acquire the share in shamlat land in view of the relinquishment of proprietary right by virtue of the compromise?
2. Whether the compromise dated 21.12.1973 required registration?
3. Whether the judgment and decree of the Lower Appellate Court suffers from illegality and perversity?”

In order to answer the aforementioned substantial questions of law, it is axiomatic to read the contents of the compromise in respect of land measuring 98 kanals 18 marlas and as well as khasra numbers of the suit property:-

Contents of compromise

“The case has been compromised through the intervention of the respectable and relations on the following terms and conditions:-

1. The defendant has received Rs.7000/- in the presence of the court in lieu of her rights in the property from Sona Devi which is the subject matter of the suits in this learned Court. The sum of Rs.7,000/- is in lieu of the entire property left by Taloki and bequeathed by Taloki in favour of Mangti by means of Will. The suit land is situated in village Nagawan. The compromise is in regard to land and property situated in village Nagawan. She relinquished all her rights and title in the suit property and admit that Sona Devi plaintiff is the sole owner of the property in suit. She is already in possession of this property. She will be deemed in possession as owner of the suit property.

2. The mutations of inheritance in favour of Mangati on the basis of the Will affected by her mother will stand cancelled and her name will be removed from the revenue record and the name of Sona Devi daughter of Hamela will be entered in place of Mangti. The defendant will get the mutation in her name of the same property as cancelled and will get the name of Sona Devi as entered as owner of the same.

The case of the plaintiff be decreed as per the terms of the compromise leaving the parties to bear their own costs.”

Khasra numbers

“Suit for declaration that the plaintiff is in possession as owner of land measuring 98 kanals 18 marlas bearing khewat/khatauni 6/11 khasra nos.30/8/3, 33/14,15, 18/1, 41/27, 49/3/2, 4, 7, 8, 14/2, 50/27, 141 khewat/khatauni 6/12 khasra no.44/15/2 khewat/khatauni 6/13 khasra no.33/17 khewat/khatauni 6/14 khasra no.33/16 khewat/khatauni 7/15 khasra nos.49/13, 15/1, 15/2 and khewat khatauni 8/16 khasra nos.49/6/2, 14/1 situated in vilage Nagawan (H.B.122) Tehsil Naraingarh as entered in the jamabandi of the year 1962-63 on the basis of documentary and oral evidence.”

On juxtaposition of the terms and conditions of the compromise and khasra numbers vis-a-vis khasra numbers in the previous suit pertaining to the land measuring 68 kanals 02 marlas, it is evident that the compromise was only in respect of 98 kanals 18 marlas and not with regard to 68 kanals 02 marlas. If the plaintiff had known the fact of acquisition of subsequent right by virtue of partition, could have included the parcel of land in the compromise.

It is a matter of record that partition of shamlat land was effected on 28.08.1975, Ex.P9. The Lower Appellate Court, in my view, rightly held that defendant no.2 was a bonafide purchaser, for, after the partition, mutation was sanctioned in favour of defendant no.1 on 6.5.1976,

Ex.P8, after the compromise.

The argument of Mr. Sharma that once the plaintiff had already acquired the proprietary rights, had the right in the shamlat land automatically allured is not sustainable as the parties while arriving at compromise were alive to the aforementioned situation and the factual aspect. Though I would not be commenting upon the registration of the sale deed as no such weightage has been given to the aforementioned arguments in the absence of any counter claim set up by the defendants.

Be that as it may, judgment and decree of the Lower Appellate Court, in my view, cannot be said to be suffering from illegality and perversity declining the ownership and possession of the suit property measuring 68 kanala 02 marlas which was not subject matter of the compromise but the trial Court did not notice the aforementioned fact and therefore, there was illegality and perversity.

As an upshot of my findings, I am of the view that the appeal does not have any merit. The substantial questions of law are answered in favour of the respondents and against the appellant.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 21st, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No