

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

RSA No.2866 of 1988 (O&M)

Date of decision:12 .04.2019

Hazara Singh (deceased) through LR's and others ... Appellants

Vs.

Sohan Singh (deceased) through LR's and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajinder Goyal, Advocate
for the appellant.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for respondent no.1.

Mr. Ashwani Talwar, Advocate and
Ms. Swati Arora, Advocate with
Mr. Akshay Bansal, Advocate
for respondent no.2(i) (ii) (iii) and
for respondents No.4 to 8 and 15 to 18.

Mr. Balram Prashar, Advocate for
Mr. Jagmohan Ghuman, Advocate
for respondents No.9 to 14.

AMIT RAWAL J.

C.M.No.11687-C of 2008

The application is allowed, subject to all just exceptions. Legal representatives of Hazara Singh-appellant no.1 as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Amended Memo of Parties is taken on record.

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff for declaration claiming to be owner in possession of land measuring 152 kanals bearing 38/85 shares of agricultural land measuring 340 kanals comprised in khewat no.363 min, khatauni no.126 rect. no.17, khasra no.5/2 (6-8), 6(8-0), 7(8-0), 8(8-0), 9(8-0), 10(8-0) 11(8-0) 12(8-0) 13(8-0) 14(8-0) 15(8-0) with consequential relief of permanent injunction restraining defendants no.1 to 6 from transferring and creating any charge over the aforementioned land, has been dismissed by the trial Court and affirmed in appeal.

The suit aforementioned was filed on the premise that defendants no.1 to 4 were owners in possession of suit land measuring 152 kanals vide sale deed dated 28.6.1960 and had sold the same in favour of Darbara Singh, Bahadar Singh, Suchha Singh, Bawa Singh, Mela Singh, Mokha Singh and Joginder Singh. The aforementioned persons vide sale deed dated 28.02.1961 registered on 1.3.1961 sold the suit land to the plaintiffs and since then, they had been in possession of suit land as owners. However, due to inadvertence and negligence on the part of the revenue officials, the entries in the revenue record could not be corrected from the names of the defendants in the names of Bahadar Singh etc., earlier vendees or in the names of the plaintiffs. On 21.11.1977, Kartar Kaur, one of the original vendors herself to be owner of the part of the suit land measuring 73 kanals 6 marlas mortgaged the same in favour of defendant no.6-State Bank of India.

Defendants no.1 to 5 contested the suit and alleged that they never sold the land in favour of Bahadar Singh etc and they are still owners and the possession was also with them and the sale deed did not have any binding effect upon them which was a result of fraud and misrepresentation, nor they appeared before the office of Sub-Registrar. The factum of alleged mortgage by Harnam Kaur was admitted.

Defendant no.6 -State Bank of India filed the separate written statement by pleading that mortgage deed was executed later on and verified the record.

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

1. *Whether Bahadur Singh etc. were owners of the land in dispute?OPP*
2. *If issue no.1 is proved, whether the plaintiffs have purchased the land in dispute vide registered sale deed dated 1.3.1961?*
3. *Whether defendant no.4 was not competent to mortgage the land in dispute in favour of defendant no.6 as alleged in para no.6 and 7 of the plaint, if so its effect?*
4. *Whether the plaintiffs are in possession of the land in dispute?*
5. *Whether the suit is time barred?*
6. *Whether the suit is bad for mis-joinder, non-joinder of necessary parties and cause of action?*

7. *Whether the plaintiffs are estopped from filing this suit by their own act and conduct?*
8. *If issue no.2 is proved whether this sale in dispute was obtained by the plaintiffs by fraud, mis-representation and coercion, if so its effect?*
9. *Whether the defendants no.1 to 5 have become owners of the suit land by way of adverse possession?*
10. *Whether the plaintiffs are entitled to special costs, if so how much?OPD*
11. *Whether defendant no.6 is a bonafide mortgagee and its right is protected under Section 41 of the Transfer of Property Act, if so its effect?OPD No.6*
12. *Whether the name of the husband of defendant no.5 has not been shown correctly, if so its effect?*
13. *Relief.”*

The plaintiffs in support of the aforementioned pleadings examined Balbir Singh, Registration Clerk as PW1. The loss of original sale deed proved from the statement of Wasava Singh on account of collapsed of the house due to the flood, thus, the original sale deed dated 28.6.1990 (Ex.P1) could not be placed on record. However, copy of the same was produced from the office of Sub Registrar which was executed by Harnam Kaur etc. in favour of the Bahadar Singh etc. PW2-Nanak Chand deposed that Harnam Kaur, Sohan Singh etc defendants inherited the suit land from Wasava Singh. PW3-Ved Parkash Chand, Registration Clerk. PW4-Suchha

Singh and PW6-Bawa Singh vendees also supported the case of the plaintiffs regarding sale of the land in their favour vide sale deed dated 03.07.1961.

In view of the aforementioned evidence, defendants did not contest the case and in appeal, the matter was remanded and after remand, plaintiffs also examined expert to prove that sale deed was executed by Harnam Kaur in favour of vendors, i.e. Bahadar Singh etc who further sold the land to them.

On the other hand, defendants examined Harnam Kaur as DW1, Mohinder Singh as DW2, Balwinder Singh, Member Panchayat as DW3, Darshan Singh as DW4 and R.D.Mittal as DW5-concerned officer from the State Bank of India. The defendants also claimed themselves to be owners by way of adverse possession.

In rebuttal, plaintiffs examined Bawa Singh as PW6 and Joginder Singh as PW7.

The trial Court on the basis of evidence, though clubbed issues no.1 and 9, did not disbelieve the sale deeds executed by the defendants but relying upon the presumption of truth i.e. jamabandi found the defendants no.1 to 4 in possession and decided issue nos.1 and 9 against the plaintiffs holding them to be owners by way of adverse possession and dismissed the suit. The Lower Appellate Court affirmed the findings of the trial Court.

Learned counsel appearing on behalf of the appellant submitted that during the pendency of the appeal, few subsequent events had taken place: i) vide orders dated 29.3.1994 and 08.08.1997, compromise Ex.C1

and Ex.C2; defendant no.1 Sohan Singh and LR's of defendant no.4, subsequently brought on record respondents no.9 to 14 suffered the decree in favour of the plaintiffs to the extent of 1/7th share and decree was modified. During the pendency of the appeal, civil misc. application bearing no.9183-C of 2008 was submitted on behalf of Dalip Singh and others for impleadment under Order 1 Rule 10 of Code of Civil Procedure and recalling of the orders of 1984 and 1997. The Division Bench of this Court vide order dated 02.07.2009 had modified the decree by giving liberty to the aforementioned parties to file the independent suit.

On merit, he submitted that sale deed has been proved through the testimony of PW4 and PW6. The plea of adverse possession tantamounts to admitting the title of plaintiff. The Courts below could not have dismissed the suit by holding it to be barred by law of limitation as there is no limitation qua title as it is only when there is threat to the title or possession, cause of action accrued to the party. In support of the aforementioned contention, relied upon the Division Bench judgment of this Court rendered in **Ibrahim Vs. Smt. Sharifan AIR 1980 P&H 25** and **Mohinder Singh and others Vs. Shangara Singh and another 2007(5) RCR (Civil) 388** whereby interpreting the provisions of Article 58 starting point of limitation has been reckoned not from the date of entry in the revenue record but when there is threat to the title. Harnam Kaur admitted that she had appeared before the Registrar. PW8 expert also proved the signatures. The compromise pertained to the land measuring 48 and half

kanals. In fact, the compromise was qua 65 kanals and the suit for remaining 87 kanals but in the review application, one of appellants had entered into compromise giving up the share qua 32 kanals.

Learned counsels appearing on behalf of the respondents submitted that findings of fact and law rendered by both the Courts below are perfectly legal and justified. The suit was filed after 17 years of the sale deed. No sane person would sit ideal in the absence of possession. In fact the plaintiffs were not handed over any possession by their vendors who alleged to be vendees of the defendants no.1 and 2 i.e. Bahadar Singh etc. All the jamabandis and khasra girdawari reflected the possession of the defendants.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as records of the Courts below and as well as case laws cited at bar with their able assistance and of the view that following Substantial Question of Law arises for adjudication of the present appeal:-

“Whether the suit of the plaintiffs claiming title in the suit property was barred by law of limitation?”

Articles 58 and 59 of the Limitation Act provide the limitation in the following manner:-

58.	To obtain any other declaration.	Three years	When the right to sue first accrues.
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59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.
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In the judgment Mohinder Singh' case (supra), this Court after noticing the provisions of Article 58 of the Limitation Act and Section 34 of Specific Relief Act found that the documents of the revenue record are not the title and the same are maintained for the purpose of only revenue record. The sale deed is a registered document which carries a presumption of truth. The question arises, whether Bahadar Singh etc. who were the vendees of defendants no.1 to 4 who further sold the land to the plaintiffs, the sale deeds are valid. The witnesses of the sale deeds have been examined as noticed above. Even the expert also stated that signatures were of the defendants. The acknowledgment of right in favour of the plaintiffs vide compromise aforementioned resulting into decretal of the suit, in part, is also testimony of the same.

It is also a matter of record that the relief of possession in respect of agricultural land would fall under the revenue laws only. The defendants all throughout had not set up any counter claim or challenged the sale deeds, i.e. registered document.

It is not a case for possession where the Courts below could have dismissed the suit on account of limitation as declaration was sought of sale deed when there was threat perception to the title. For the sake of brevity, para 9 of Mohinder Singh' case (supra) reads as under:-

“9. It is well settled that entries in the revenue record does not by title give rise to a cause of action. Reference may be made to **Ibrahim Vs. Smt. Sharifan AIR 1980 Pujab & Haryana 25** and **Balwant Singh vs. Khushal Singh** and another 2004(1) RCR (Civil) 806: (2003-3) 135 Punjab Law Reporter 439. The Division Bench in Ibrahim's case (supra) has held that entry in the revenue record by itself does not provide any cause of action. The cause of action arises only when there is any threat to the title of the suitor.”

The aforementioned judgment was passed after noticing the observations of the Hon'ble Division Bench of this Court in Ibrahim's case (supra). Para nos.7 and 8 of the judgment read thus:-

7. It may be observed at the outset that the word 'first' occurring in [Art. 58](#) of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of a mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that mutation was sanctioned in favour of the defendant after the death of Akbar and in case such an entry furnishes a cause of action, then certainly the suit would be barred by limitation. Even Mr. Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of a mutation did

not furnish any cause of action and in support of his contention he relied on a Division Bench judgment of this Court in Niamat Singh v, Danbari Singh etc, (1956) 58 PLR 461. In our view, the contention of the leaned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutations in the name of the defendant after the death of her father Akbar or her mother Smt. Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land of her share. In this situation, no cloud was cast on the title of the plaintiff by mere entry of the mutation in the name of the defendant. Further, there is no proof on the record to show that before April, 1969, by any act or assertion of the defendant the right of the plaintiff was ever actually jeopardised, The defendant is occupying a house in the village.

8. *The assertion of the plaintiff is that it was given by him to her out of compassion, while the plea of the defendant is that she occupied it as of right. Be that as it may, the fact remains that so far as the agricultural land is concerned, the defendant after the sanction of the mutations never asserted her right to her share in the land in dispute, nor did she ever get any rent or produce and that it was in the year 1969 that she tried to assert her right and interfere with the possession of the plaintiff. In this situation, mere entry of a mutation in the name*

of the defendant would not furnish any cause of action to the plaintiff. This view of ours finds full support from the judgment of the Division Bench in Niamat Singh's case. Thus, we do not agree with the learned single Judge that the cause of action arose when the mutation was entered in the name of the defendant and consequently, reverse the finding on issue No. 4 and hold that the snit filed by the plaintiff is within limitation.”

In my view, the judgments and decrees of the Courts below in dismissing the suit are not sustainable as totally fallacious and preposterous, much less perverse. The judgments and decrees of both the Courts below are set aside. The suit is decreed considering the part decree already passed by this Court vide orders dated 29.3.1984 and 8.4.1987 and as well as 02.07.2009. The Substantial Question of Law, above is answered in favour of the appellant-plaintiffs and against the respondent-defendants.

The regular second appeal is allowed.

The review application bearing No.33-C of 1994 filed by the appellants reviewing/challenging the order dated 29.03.1994 is dismissed. Consequently, the application bearing No.3445-C of 1994 for condonation of delay in filing the review application is also dismissed.

(AMIT RAWAL)
JUDGE

April 12, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No