

**RSA-841-1988 (O&M) &
CR-6413-2008 (O&M)**

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

Date of decision : 09.05.2019

1. RSA-841-1988 (O&M)

Santokh Singh (deceased) through LR's and others

... Appellants

Versus

Amar kaur and others

... Respondents

2. CR-6413-2008 (O&M)

Bachan Singh and another

... Petitioners

Versus

Ajmer Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.R. Mahajan, Senior Advocate with
Ms. Manpreet Ghuman, Advocate and
Ms. Surabhi, Advocate
for the appellants in RSA No.841-1988 and
for the petitioners in CR No.6413 of 2008.

Mr. J.L. Malhotra, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of one regular second appeal,
at the instance of the appellants-defendant Nos.1 and 3, filed against the
judgment and decree of the lower Appellate Court, whereby the suit of the
respondents-plaintiffs for declaration and possession, dismissed by the trial

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Court, has been decreed as well as, one revision petition, aforementioned.

The respondents-plaintiffs instituted the suit for declaration that the plaintiffs and along with defendant Nos.4 to 7, were owners to the extent of $\frac{1}{2}$ share of land measuring 39 kanals 12 marlas, having $\frac{1}{3}^{\text{rd}}$ share each, owned by Bagail Singh. It was alleged that Bagail Singh was owner of the land measuring 19 kanals 6 marlas. He died in May 1956, before coming into force the Hindu Succession Act, 1956. He had three sons and one daughter i.e. Mangal Singh, Mohinder Singh, Gurbax Singh and Achhro. Mangal Singh died and he was survived by widow and son Harbhajan Singh. The plaintiff No.1 is the widow of Harbhajan Singh, whereas plaintiff Nos.2 to 4, are their children. On demise of Bagail Singh, mutation, in respect of entire land, was sanctioned on 23.06.1962, in favour of all the siblings i.e. three sons and Achhro, to the extent of $\frac{1}{4}^{\text{th}}$ share. Mohinder Singh was arrayed as defendant No.4. Gurbax Singh, died and survived by three sons, Ajit Singh, Bachan Singh, Amrik Singh/defendant Nos.5 to 7. Achhro died on 13.07.1968 and survived by two sons i.e. Lakha Singh and Iqbal Singh/defendant Nos.1 and 2. In the year 1983, i.e. vide sale deed dated 10.01.1983, sold the land to appellants/defendant Nos.3- Santokh Singh, measuring 4 kanals 19 marlas. In these circumstances, alleged cause of action accrued in favour of Amar Kaur to file the suit, on 30.04.1983, and the possession was also sought.

The defendants opposed the suit by raising objection qua limitation, maintainability and on merits, stated that plaintiff No.1 was estopped to assert the right in $\frac{1}{3}^{\text{rd}}$, as the succession could not have been kept in abeyance for infinite period.

The trial Court, on the basis of the evidence brought on record, dismissed the suit, but the lower Appellate Court reversed the findings, by noticing that with regard to the estate of Bagail Singh, mutation was effected, in respect of other piece of land situated at Sirsa, only in the name of three sons and not Achhro as there was applicability of the 1956 Act.

Mr. B.R. Mahajan, learned Senior Counsel assisted by Ms. Manpreet Ghuman, learned counsel appearing on behalf of the appellants/defendant Nos.1 & 3, submitted that the appellant-defendant No.3 is the bona fide purchaser for a valuable consideration and liable to be protected under the provisions of Section 41 of the Transfer of Property Act. The suit land was purchased after making enquiry in respect of the suit land, i.e. mutation of 1962 and subsequent five jamabandis, effected after four and half years. It is also a matter of fact that Amar Kaur, during the interregnum, had, vide sale deed dated 23.06.1989, sold the land measuring 10 kanals. The relief of possession could not have been granted as at the best, the remedy was to seek the partition by separate possession. The decree should have been for joint possession. The suit was barred by law of limitation as the plaintiffs did not assert the right, during the lifetime of Achhro.

Per contra, Mr. Malhotra, learned counsel appearing on behalf of the respondents-plaintiffs submitted that the appellants-defendants are not *bona fide* purchasers of the land as they did not verify the record nor made any reasonable enquiry. They were required to verify the nature of the land, for, Bagail Singh, died in May 1956, whereas the 1956 Act, came into force in June 1956. The factum of death was acknowledged by the lower

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Appellate Court, by noticing the mutation of 1956, in respect of land situated at Sirsa, therefore, onus with regard to factum of death, stood discharged. The lower Appellate Court, being the last court of fact and law, after appreciating the evidence, has rightly decreed the suit, thus, urges this Court for dismissal of the second appeal.

In revision petition, Mr. Mahajan, submitted that the decree was defective in law as the lower Appellate Court, in penultimate paragraph, said that as prayed for, without noticing the fact that the case espoused in the plaint was not not only on behalf of the plaintiffs, but as also of the defendant Nos.4 to 7, whereas it should have been construed for joint possession. There was ambiguity that whether the decree was granted for declaration or secondary relief of possession. The objections have erroneously been dismissed, resulting into, filing of the revision petition.

This Court, while admitting the revision petition, vide order dated 22.03.2010, stayed the operation of the order of warrant of possession.

I have heard learned counsel for *the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law, arise for determination:-*

- 1. Whether the suit filed on 30.04.1983 assailing the sale deed dated 10.01.1983, was barred by law of limitation.*
- 2. Whether the law of acquiescence would apply.*
- 3. Whether the judgment and decree of the lower Appellate Court suffers from ambiguity, resulting into, perversity.*
- 4. Whether appellant-defendant No.3, was the bona fide purchaser.*

It is a matter of record that the mutation of 1956 qua estate of

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Bagail Singh, in respect of land situated at Sirsa, was mutated in favour of three sons, namely, Mangal Singh, Mohinder Singh and Gurbax Singh and not Achhro, who was alive, at that time and the property, subject matter of the sale deed, was situated in Amritsar. Any purchaser would not even dreamt of making enquiry with regard to the land, when it was not subject matter of any sale. Achhro died in 1968 and her share was mutated in favour of two sons, namely, Lakha Singh and Iqbal/defendant Nos.1 and 2. None of the other brothers, assailed mutation of inheritance in 1962. During all this period, Achhro asserted the right as owner to the extent 1/4th share.

It is a also matter of record that plaintiff No.1, during this period, had, vide sale deed dated 23.06.1989, also sold the land measuring 10 kanals. The appellants, in my view, are *bona fide* purchasers as they had verified the mutation of 1962 and all the subsequent jamabandis, did not find any defect in the title qua share-holding of Achhro. The lower Appellate Court could not have connected property situated at Sirsa and burdened the liability of making enquiry upon the defendants, therefore, this finding do not sound any logic and suffers from perversity.

As regards the objection qua limitation, the law with regard to the same is no longer *res integra*, in view of the ratio decidendi culled out by the Division Bench of this Court in **“Ibrahim vs. Smt. Sharifan” AIR 1980 Punjab and Haryana 25**, as, for claiming the right in the property, on the basis on inheritance, only when the ownership or the possession is effected. The ownership, according to the plaintiffs, which was only under cloud, in 1983, whereas the suit was filed in April 1983, thus, the objection

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of Mr. Mahajan, with regard limitation, is not sustainable and is hereby rejected.

The lower Appellate Court, in para No.14, of the judgment, while allowing the appeal, decreed the suit, as prayed for. For the sake of brevity, para No.14 of the same reads as under:-

"14. Consequently, I set aside the judgment and decree of the learned lower court and decide issue Nos.1 and 5, 6 and 7 in favour of the plaintiffs. Likewise issues No.2, 3, 4 and 8 are decided against the defendants. The suit of the plaintiffs is accordingly, decreed as prayed for and this appeal is accepted with costs throughout."

However, decree reveals allowing of the appeal. The relevant portion of the same reads as under:-

"Dated of presentation of plaint in First Court 2.5.83.

Date of decision in First Court 24.10.1985.

Appeal No.166 of 1985/87 from the order of the court of Shri S.P. Bangarh, Sub Judge II Class, Amritsar, 24.10.85.

Suit for declaration that the plaintiffs and defendants No.4 to 7 are owners of ½ share of land measuring 39 kanals 2 marlas having 1/3rd share each in khata Khatuani Nos.22/55 to 58, 179/404, 23/59 to 61, killa Nos.56/1 45/23, 15, 16, 17/1, 17/4, 16, 19/1/1, 20/2/2/1, 20/1/1, 22/1, as entered in jamabandi for the year 1976-77, situated in Village Bhakhana Khurd Tehsil and District Amritsar and defendants Nos.1 and 2 have no right, title or interest in this land and rate made by defendants Nos.1 and 2 in is favour of defendant No.3 is null and void and

illegal and have no effect on the rights of the plaintiffs and defendants No.4 to 7 or in the alternative if it is found that defendant No.1 to 3, are in possession of any part of the land in dispute referred above, thus, a decree for possession may be passed in favour of the plaintiffs.

Memorandum of Appeal

Smt. Amar Kaur etc. Plaintiffs.

Lakha Singh etc. Defendants

The plaintiffs above noted appeals to the Additional District Judge, Amritsar, from the decree of Sh. S.P. Bangarh, Sub Judge II Class, Amritsar, in the above suit dated 24.10.1985, for the following reasons namely, (as per grounds of appeal).

The appeal coming on for hearing on the 29th day of October, 1987, before me (Sh. A.B. Singh Wasu), Addl. District Judge, Amritsar, in the presence of Shr. A.K. Bansal, Advocate for the appellant and J.S. Sandhu, Advocate for the respondent, it is ordered that the appeal is accepted with costs throughout."

Such an ambiguity claiming execution of the decree, without incorporating relief, aforementioned, that to at the instance of the vendees of sale deed dated 23.06.1989, was not correct approach. Once the declaration was sought claiming right with regard to all three shares, decree could not have been confined for joint possession and not of entire 10 kanals of land. The remedy is to seek the partition by separate possession, in view of the subsequent events i.e. creation of third party rights.

As an upshot of my observations, the judgment and decree of

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the lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of the trial Court is restored. The Substantial Questions of Law, as framed above, are answered in favour of the appellants-defendants and against the respondents-plaintiffs. Resultantly, the second appeal is allowed.

As regards the revision petition, since the main appeal is decided, no cause of action survives in the present revision petition and the same is disposed of as having been rendered infructuous.

09.05.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**