IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1149 of 1992 (O&M)
Date of Decision: May 30th, 2019

Kamal Nain & others

...Appellants

Versus

Inder Singh (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Salil Sagar, Senior Advocate with
Mr. Sankalp Sagar, Advocate,
for the appellants.

Mr. Rishab Lohan, Advocate,
for the respondents.

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AMIT RAWAL, J.

Appellant-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiffs seeking a pre-emptory right by challenging the sale deed dated 05.04.1989 executed by defendant No.4 Brahma, a co-sharer, in favour of appellant-defendant Nos.1 to 3, has been decreed by the trial Court and affirmed in appeal.

It was alleged that defendant No.4- Brahma had 1/3rd share in the total land measuring 212 kanals 11 marlas situated in the revenue estate of Village Jajwan comprising Khewat No.131. It was to defeat the right of the plaintiffs being co-sharers in the entire khewat. Neither any notice was given.

Defendant No.4 did not appear despite service and was proceeded ex-parte.

Appellant-defendant Nos.1 to 3 appeared and contested the suit alleging that the sale was not pre-emptible as defendant No.4 had only sold specific killa number to the vendees, in which plaintiffs were not the co-sharers. A sum of ₹ 29,680/- was paid by the appellants to the vendor as earnest money and another sum of ₹ 18,312/- at the time of the sale deed.

On the basis of the pleadings of the parties, the trial Court framed the following issues:-

> "*1. Whether the plaintiffs have a superior right to pre-empt the sale in question as alleged in the plaint? OPP*
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> *2. Whether the sale consideration of Rs.90000/- was fixed in good faith and was actually paid as alleged in written statement? OPD*
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> *3. If issue No.2 is not proved what is the market price of the land in dispute? OPParties*
>
> *4. Whether the defendants 1 to 3 have incurred expenses stamp and registration, if so to what amount and to what effect? OPD*
>
> *5. Whether the suit is not maintainable in the present form? OPD*
>
> *6. Whether the suit is not within time? OPD*
>
> *7. Relief.*

Plaintiffs, in support of the aforementioned pleadings, examined plaintiff No.1 Inder Singh as PW-1 and brought on record sale deed Ex.P1 and jamabandi Ex.P2, whereas the defendants examined DW-1 Om Parkash and also placed on record revenue record.

Mr. Salil Sagar, learned Senior Counsel assisted by Mr.Sankalp Sagar Advocate, representing the appellant-defendants submitted that both the courts below have misread the contents of the sale deed as the plaintiffs had acquired the ownership in the suit property by virtue of the sale deed dated 08.02.1983, which is of Khewat No.101, whereas the subject matter of the suit land was of Khewat No.131, in this regard had also read out the translated copy of the sale deed dated 08.02.1983 and as well as the impugned sale deed dated 05.04.1989. In support of the aforementioned contention, relied upon the following judgments:-

1. **Union of India and others Versus Vasavi Cooperative Housing Society Limited and others, (2014) 2 Supreme Court Cases 269** to contend that the revenue record does not confer any title. In other words, the jamabandi was not sufficient requirement of law. Moreover, it did not tally with the contents of the sale deed;
2. **State of Uttarakhand and another Versus Mandir Sri Laxman Sidh Maharaj, (2017) 9 Supreme Court Cases 579** to contend that the plea is also with regard to Khewat No.101 and not of 131 and, therefore, as per the provisions of Order 6 Rule 2 CPC, suit was liable to be dismissed;
3. Full Bench judgment of this Court in **Ram Chander Versus Bhim Singh and others, 2008(3) PLR 747** to contend that the rectangle numbers and killa numbers are revenue measures, used by revenue authorities for establishing the described fields that constitute the ownership of a land owner, thus, the plaintiffs miserably failed to place on record the evidence.

On the contrary, Mr. Rishab Lohan, learned counsel representing the respondent-plaintiffs submitted that the jamabandi reflected the status of the respondent-plaintiffs and the vendor-respondent No.4 as co-sharers, but the Rect.No.88 of the suit property is identical and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

In **Ram Chander's case (supra),** the Full Bench of this Court defined the rectangle number as revenue measures. A holding can be divided into different khewats, khataunis, rectangles and killas/khasra all bearing different numbers to reflect the jointness of the owner and co-sharer, thus, where the landowners are in joint ownership and reflected owners in a common khewat, they would continue to remain the owners in possession of the land situated in different khewats, rectangles and khasra/killa numbers.

The jamabandi carries a presumption of truth under Section 44 of the Punjab Land Revenue Act unless rebutted. Said exercise has not been undertaken. There was no other property than the one and as also rectangle being sought to be projected by Mr.Salil Sagar. The co-sharership was only with regard to Rect. No.88. Findings of fact, in such circumstances, cannot be said to be suffering from illegality or perversity to form a different opinion that the property was different and, therefore, pre-empted.

No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

May 30th, 2019 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No