

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

RSA No. 2969 of 1997 (O&M)

Date of decision: 30.5.2019

Bishamber Dayal and othersAppellants

VERSUS

Duli Chand and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. Vikas Bahl, Senior Advocate with
Mr. Amit Jain, Advocate for the respondents.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 30.07.1997 whereby appeal preferred against judgment and decree dated 18.10.1995 passed by the trial Court decreeing suit of the appellants/plaintiffs was allowed, judgment and decree dated 18.10.1995 were set aside and suit filed by the appellants/plaintiffs was dismissed.

The appellants/plaintiffs claimed that they are owners in possession of agricultural land bearing rectangle No.17 killa No.10 (8-0), 3 (8-0), 18 (4-11), 19(4-0) measuring 24 kanal 11 marlas situated in the revenue estate of village Mau, Tehsil Pataudi, District Gurgaon on the basis of registered sale deed dated 16.10.1980, in respect whereof mutation No.458 was sanctioned on 12.11.1980. It is averred that appellants are in cultivating possession of suit land since its purchase. The respondents/defendants got re-opened the mutation and the same was rejected on 31.07.1986 by the Circle Revenue Officer. The rejection of

mutation is illegal, null and void. They prayed for relief of perpetual injunction restraining the respondents to take forcible and illegal possession of the suit land.

The respondents/defendants filed the written statement and submitted that they never sold any specific killa numbers to the appellants as they were not in possession of any specific killas numbers. The answering respondents are simple, illiterate villagers and they were not told that specific killa numbers were being written in the sale deed, therefore, sale deed is illegal, void and without authority. They have denied the allegations that mutation was wrongly rejected by the Circle Revenue Officer.

The appellants filed replication and re-asserted their claim raised in the plaint and controverted allegations of the written statement.

The trial Court framed the following issues:-

1. Whether the plaintiffs are owner in possession of the suit land as alleged? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD
4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the suit is not within time? OPD
6. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the

light of materials on record, the trial Court decreed the suit to the following effect:-

“....the plaintiffs are owners in possession of the suit land, therefore, the suit of the plaintiffs is decreed as no order as to costs. However, in view of the entries in Ex.P1 it is held that the present judgment has no effect as and when the suit land will be partitioned among the share holders/pattidarans.”

As has been noticed hereinbefore, appeal preferred by one of the defendants namely Duli Chand was accepted by the Additional District Judge, Gurgaon and suit of the appellants/plaintiffs was dismissed. The reasons that weighed in the mind of first Appellate Court to set aside the judgment and decree passed by the trial Court are detailed in paras 9 and 10 of the judgment.

Counsel for the appellants would argue that the defendants never denied execution of sale deed dated 16.10.1980 which is otherwise a registered document and certified copy thereof is a public document. It is further argued that there is no provision in the Indian Evidence Act, 1872 (in short ‘the Act’) that mandates seeking permission of the Court to prove a document by way of secondary evidence, if the case otherwise falls within the purview of any of the conditions prescribed in Section 65 of the Act. Counsel would further argue that even if it is upheld that they cannot become exclusive owner of the khasra numbers detailed in the sale deed they certainly become co-sharers to the extent of land measuring 24 kanal 11 marlas and entitle to joint possession to that extent along with other co-sharers of the joint khewat/khata. The last submission made by counsel is

that even if findings of the Appellate Court that the appellants are not successful to prove their possession of land in question are affirmed, they would be entitle to joint possession and as such suit for declaration without claiming relief of possession cannot be said to be hit by explanation appended to Section 34 of the Specific Relief Act, 1963.

Counsel representing the respondents, on the contrary, would urge that as the appellants failed to satisfy the requirements of clause (a) of Section 65 of the Act that original sale deed has been lost, they are not entitle to prove the same by way of secondary evidence, therefore, they cannot derive any advantage to their contention from the certified copy which is otherwise a marked document. Counsel has vehemently argued that plea of the appellants that they have become owner of the suit land on the basis of sale deed propounded by them further gets falsified and belied from recitals in the document mark – A as it has been specifically recited therein that they have executed the sale deed on the basis of entry in column of possession. It is further argued that in the jamabandi, disputed land is recorded to be ownership of patti, therefore, the appellants cannot derive right of ownership on the basis of sale deed which otherwise has not been proved, in accordance with law.

I have heard counsel for the parties, perused the paper-book and original records.

This Court vide order dated 10.05.2019 issued directions to the office of Sub Registrar, Pataudi, District Gurgaon to produce the records in original pertaining to vasika No.589 dated 14.10.1980 registered on 16.10.1980. A relevant extract therefrom reads as follows:-

“The office of Sub Registrar Pataudi, District Gurgaon is directed to produce the records in original pertaining to Vasika No.589 dated 14.10.1980 registered on 16.10.1980. Adjourned to 28.05.2019.

The Registry is directed to ensure that a representative of the said office along with original records in respect of the aforesaid vasika number would remain present before this Court on the next date of hearing.”

In pursuance thereof, Sh. Vikas Verma, a representative from the office of Sub Registrar, Tehsil Pataudi, District Gurugram produced the original register pertaining to vasika No.593 dated 14.10.1980 registered on 16.10.1980. On perusal of the records produced by the official, counsel for the respondents did not dispute that certified copy of sale deed dated 14.10.1980 produced before the trial Court has been correctly prepared from the original sale deed available in the records.

As the original sale deed was got produced from the office of Sub Registrar concerned, any objection raised by the respondents with regard to non-admissibility of certified copy or findings of the first Appellate Court in this regard carry no weight.

The respondents/defendants have not denied execution of the sale deed in question. On the contrary, they raised a plea that taking advantage of their illiteracy, specific khasra numbers were got incorporated in the sale deed in question. This plea of the respondents/defendants cannot be accepted for want of sufficient evidence. This apart, a presumption of correctness is available to a registered document

particularly endorsement made by the registering authority. Even if plea of the respondents is accepted that they did not sell specific khasra numbers of suit land or plea of the appellants is accepted that they had purchased specific khasra numbers incorporated in the sale deed, it would be of no legal consequence when examined in the light of settled position in law that sale of share even by way of specific khasra numbers by a co-owner would not entitle the vendee to claim any better rights than that of his vendor and such a vendee would step into shoes of his vendor and only becomes a co-sharer in the joint property. In this view of the matter, contentions raised by counsel for the respondents qua specific khasra numbers would be of no consequence.

This brings the Court to the crucial question as to what rights were transferred in favour of the appellants on the basis of sale deed dated 14.10.1980. The appellants have not produced evidence to establish that the respondents were co-owners in the joint khewat or they were members of the patti recorded to be owner of the khewat comprising land measuring 24 kanal 11 marlas, recorded to be in possession of respondents. On the other hand, perusal of certified copy of the sale deed makes it evident that the same makes reference only to column of cultivation (baruye khana kasht). It appears that the respondents transferred their possessory rights in the land in question in favour of the appellants. In this view of the matter, appellants cannot claim themselves to be owners of suit land on the basis of sale deed, certified copy whereof is mark-A. However, in view of discussion made hereinbefore, they are entitle to declaration in respect of their joint possession of land to the extent of 24 kanal 11 marlas. At the same time, since the respondents have not raised any plea that after

execution of the sale deed in question, they were left with any rights qua land measuring 24 kanal 11 marlas, the respondents would not be entitle to claim any such right in land, to the aforesaid extent in future.

To be fair to the respondents, counsel had tried to make a point that suit for declaration without claiming possession is not maintainable in the light of Section 34 of the Specific Relief Act, 1963. Counsel for the appellants has not challenged factual findings by the Appellate Court that the plaintiffs have failed to prove their possession on any part of the suit land. Since the suit land is part of a joint khewat owned by a patti of which different khasra numbers are recorded to be in possession of various persons, the appellants cannot seek actual possession unless the joint khewat is partitioned in appropriate proceedings. In this view of the matter, contention raised by the respondents with regard to non-maintainability of the suit is devoid of merit and accordingly rejected.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal is partly allowed. Judgment and decree passed by the first Appellate Court is set aside. The suit filed by the plaintiffs/appellants is partly decreed to the effect that they are in joint possession of suit land to the extent of 24 kanal 11 marlas on the basis of sale deed dated 14.10.1980 registered on 16.10.1980. In the peculiar facts and circumstances, the parties are left to bear their own costs.

MAY 30, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no