

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA no.452 of 1996 (O&M)

Date of Decision: 13.02.2019

Major Singh and another

...Appellants

versus

Beerinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. C.S. Jattana, Advocate,
for the appellants.

Mr. R.K. Sharma, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is the second appeal filed by the legal representatives of the defendant, he having remained unsuccessful in both the courts below.

The respondent-plaintiff (Beerinder Singh) filed a suit seeking a declaration that he along with other co-owners was in possession of land measuring 476 *kanals*, situated in the revenue estate of Village Heero Khurd, Tehsil Mansa, District Bathinda. He had a 1/6th share in the land, out of which he had sold a 20/36th share to the defendants vide a sale deed dated 19.02.1976, but mistakenly a mutation was sanctioned in favour of the defendants, in respect of land measuring 36 *kanals*, instead of a 20/36th share in the total holding of 476 *kanals*. The plaintiff therefore also sought that the mutation entry be held to be not binding on him.

2. The defendants controverted the allegation of the plaintiff by pleading that the suit was not maintainable as the plaintiff was not in possession of any part of the land, and in fact 36 *kanals* of land were sold to the defendants and therefore the mutation had rightly been sanctioned in their favour and that the

respondent-plaintiff being a very clever man had simply taken advantage of the innocence and illiterate status of the present appellants-defendants.

They also contended that the suit was barred by limitation.

They also pleaded that the plaintiff not having claimed any consequential relief, he was not entitled to the declaration prayed for and thus the suit of the plaintiff was not maintainable in the present form.

3. A replication having been filed, on the basis of the said pleadings, the learned Sub-Judge 1st Class, Mansa, had framed the following issues:-

- “1. Whether the plaintiff only transferred 20/36 share of the suit land and the defendants got mutation sanctioned of entire land measuring 36 kanals which is illegal null and void and is liable to be set aside? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
- 2(a) Whether the suit of the plaintiff is within the period of limitation? OPP.
3. Whether the plaintiff is estopped for filing the suit by is own act and conduct? OPD.
4. Relief.”

4. The learned trial court vide its judgment and decree dated 02.12.1991 decreed the suit of the plaintiff in his favour, with costs, by holding that the defendants are not owners of the suit land by way of adverse possession, with the suit held to be within the period of limitation (even though no issue on adverse possession had been framed).

5. The first appeal preferred by the defendants was dismissed by learned Addl. District Judge, Mansa, vide his judgment and decree dated 04.01.1996.

6. Still feeling aggrieved, the instant second appeal has been preferred by the defendants.

It is to be specifically noticed that the learned first appellate court has stated in paragraph 5 of its judgment that only the finding of the trial court qua issues no.2 and 2(a) was challenged in the appeal before that court, i.e. on the

maintainability of the suit and as to whether it was within the period of limitation.

7. Mr. Jattana, learned counsel for the appellants, submits that as per the record of evidence led before the learned trial court, the sale deed executed by the respondent-plaintiff in favour of the appellants-defendants on 19.02.1976 was for an area of 20 *kanals* of the joint *khewat* held by the parties (along with others); however, a mutation was entered on June 15, 1976, showing 36 *kanals* of the said joint *khewat* to have been purchased by the appellants-defendants.

Thereafter, the said mutation was sought to be corrected by the respondent-plaintiff only on 26.02.1987.

Upon query as to how any application for correction of a mutation entry in the revenue record would either confer or take away any inherent right of ownership, especially in a joint *khewat*, learned counsel eventually could not deny that in the absence of a plea of adverse possession taken, the inherent ownership of a true owner could not be affected.

8. In the aforesaid background, it is next seen that the contention seen to be raised before the learned courts below, to the effect that the sale deed was actually for an area of 36 *kanals*, was found to be wholly a false claim of the appellants, by both courts. Learned counsel for the appellants is also not able to deny (he in fact very fairly admitting), that the sale by way of the sale deed, Ex.P-1, actually shows that it was for a 20/36th share thereof, and not for 36 *kanals*, though in the first line of the sale deed (in vernacular) the figure and word “36 *kanals*” is written, after which it is stated that a 20/36th share of the holding was being sold.

9. Hence, in the face of the factual possession, the questions of law that could possibly be considered to be arising at all, would be, firstly, whether

a mutation entry, showing larger area sold than the sale deed itself depicted, could confer any right on the appellants and if not, could the suit seeking a declaration of nullity qua that entry, be said to be beyond limitation.

The other issue that has been raised by learned counsel for the appellants is that without seeking a decree of possession, the suit filed by the respondent was not maintainable. To support that contention, he cited the judgment of the Supreme Court in Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar v. Chandran and others, 2017(2) RCR (Civil) 1.

Thus, the other question of law which could be said to arise on the aforesaid contention, is whether the suit filed by the respondent-plaintiff was maintainable or not, no relief of possession having been sought, the suit being one seeking a declaration to the effect that the plaintiff and his co-sharers are owners in possession of land measuring 476 kanals, with the plaintiff being the owner of a 1/6th share therein, as per the *jamabandi* for the year 1985-86, he further seeking a declaration that the mutation entry showing that 36 kanals of land were sold by him to the defendants, being a false entry was not binding on him.

[In fact, no question of law is seen to be framed in the appeal, with the above questions having been framed by this court, now.]

10. No case law needs to be cited to hold that mutation entries do not confer title of any kind on any person; they only reflect the title vesting in such person, on the basis of either natural inheritance or on the basis of any document by which such title was vested in her/him.

Thus, with the sale deed dated 19.02.1976 having been found by the learned courts below to be in respect of a sale of a 22/36th share, i.e. of 20 kanals of land and not 36, very obviously the mutation entry made in the

revenue record, qua that sale deed, did not reflect the correct position with the execution of the sale deed itself not doubted even by the appellant-defendants. Their only contention at that stage was that it was in respect of 36 kanals of land, with that factually not proved by them in any manner, by even a plain reading of the document. Naturally therefore, a wrong mutation entry cannot confer any title on any person.

11. On the issue of the mutation entry having been challenged after a period of about ten and half years, i.e. with the entry stated to be dated June 15, 1976 and it being sought to be corrected only on 26.02.1987, again that is a contention that needs to be rejected, in my opinion.

As regards limitation governing suits relating to possession of immovable property, including with regard to a declaration of ownership, Article 65 of the Schedule to the Limitation Act only provides for a limitation of 12 years when the defendant in a suit pleads adverse possession of the suit land (if his contention is that he has been in possession of it for more than 12 years, such possession being open and hostile to the knowledge of the true owner).

The suit in the present *lis* was no doubt not one seeking possession but a declaration, and Article 58 contained in Part III of the said Schedule states that for any other declaration (other than a declaration qua a forged instrument or an alleged adoption), the limitation to sue is 3 years from the date when the right to sue first accrues.

However, in my opinion, as regards the suit not being maintainable as regards the primary declaration sought, on the respondent-plaintiff being the owner in possession thereof, his title having been duly proved even by way of revenue records before the learned courts below, and the sale deed in any case

not shown to be actually in respect of a sale of 36 *kanals* but only a 20/36th share as already seen earlier, such a declaration sought would not suffer from any bounds of limitation, as the sale deed in any case was not sought to be declared a nullity by the plaintiff, who in fact relied upon it. Hence, the cause of action from which limitation is to start, would actually be a never ending cause, with the plaintiff being the owner in possession of the suit land and he simply seeking a declaration to that effect, to negate a mutation entry which erroneously states otherwise, mutation in any case not conferring title but only actually required to reflect it correctly, as already discussed hereinabove.

Therefore, with the mutation entry dated 15.06.1976 not affecting the substantive rights of the respondent-plaintiff, of his ownership and possession of the suit land, though of course a declaration for its nullity was sought much beyond 3 years from the date of the entry, the suit cannot be said to be non-maintainable on grounds of limitation, the substantive declaration being one of inherent title to the suit land and proven possession of the plaintiff thereupon, with an erroneous entry reflecting otherwise not overriding such substantive right of the plaintiff. Consequently, even upon the plaintiff making any application to the revenue authorities for correction of the error on the basis of the document by which he divested himself of certain share in the suit land, i.e. the sale deed dated 19.02.1976, such an application cannot be refused by the revenue authorities, as an incorrect reflection of a substantive right which continues to vest in the plaintiff, as it would amount to a contradiction of the substantive right itself.

Hence, I find no substance in the argument of learned counsel on the issue of a mutation entry not being challengeable after a period of 10 years, vesting of the title to the suit land in the plaintiff not having been proved in any

manner, to be a false claim by the appellant-defendant.

12. Thus, with both the courts below having come to a concurrent finding of fact, which could not be denied even before this court, that actually it was a 20/36th share that was sold/purchased vide the sale deed Ex.P1 (and not 36 *kanals*), there would be no reason for this court, in a second appeal, to interfere with such concurrent finding, not shown in any manner to be perverse.

13. As regards the 2nd question of law framed in para 9 hereinabove and the judgment cited by Mr. Jattana, of the Supreme Court, in *Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar* (supra), learned counsel for the respondents shows that that was not a case of any co-sharer in a suit property, and consequently, the ratio of that judgment would not be applicable, wherein it was held that the plaintiff not having been found to be in possession, and having sought only a declaratory relief (without seeking possession), the suit itself was not maintainable.

In the present case, the learned courts below have also come to a concurrent finding of fact that the *khewat* in which the suit property is contained is a joint *khewat*, in which the appellants as also the respondents are joint owners to the extent of the shares owned by them and therefore they would all be deemed to be in possession of the entire *khewat*. Hence, I agree with the learned counsel for the respondents, that the said judgment does not apply to the facts and circumstances of the present case, because firstly, the parties to the *lis* are co-sharers in the *khewat* in which the suit land is contained and therefore, there was no need for him to seek a decree of possession.

14. Also the ratio of that judgment would, naturally, apply in terms of the statutory provision contained in Section 34 of the Specific Relief Act, 1963, which reads as follows:-

“34. Discretion of court as to declaration of status or right-

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

PROVIDED that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation: A trustee of property is a "person interested to deny "a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

Thus, as per the proviso contained in the aforesaid provision, where a plaintiff being able to seeking further relief than a mere declaration of title, omits to do so, no such declaration would be made by the court.

In the present case, the respondent being in possession even as per the revenue record, as could not be denied by the learned counsel for the appellants, he naturally did not seek possession but only a declaration of his ownership to the extent of the share he retained in the land after having sold a 20/36th share to the appellant-defendant.

Hence, the 2nd question of law framed is answered to the effect that the suit of the respondent-plaintiff was maintainable, there being no occasion for him to seek possession of the suit land but only a declaration of his joint ownership in the *khewat*, possession of his share already contended to be with him.

15. Consequently, in view of the aforesaid discussion, finding no merit in this appeal, it is dismissed.

16. Mr. Jattana has, however, also stated at this stage that another suit is pending, in which the appellants herein are seeking a declaration (as plaintiffs) to the effect that the remaining 16 *kanals* of land were in fact

exchanged by them with the respondent-plaintiff as per a revenue entry (no.365 dated 18.06.1982), the said suit having been instituted in the year 2015.

That suit not being subject matter of this appeal, naturally it would be decided wholly on its own merits by the trial court, on all aspects, including obviously any question raised in terms of Section 11 or Order 2, Rule 2 of the CPC, and therefore, no comment is to be made on that *lis* by this court, in this appeal.

13.02.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes