

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 251 of 2011 (O&M)

Date of Decision: 2.9.2019

Sadhu Singh

---Appellant

vs.

Gurbachan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Prateek Sodhi, Advocate, for the appellant
Mr. Aakash Singla, Advocate, for respondents No. 1, 7 to 13

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration and joint possession filed by the plaintiffs-appellant was dismissed by the trial court vide judgment and decree dated 31.8.2005 that came to be affirmed in appeal by the Additional District Judge, Kapurthala, vide judgment and decree dated 5.5.2010.

The plaintiffs including appellant have claimed themselves to be successors in interest of Ms. Jagjit Kaur who died on 27.1.1982 and said Jagjit Kaur was one of the daughters of Sh. Basawa Singh who died on 23.4.1964. It is averred that Basawa Singh left behind his widow Ishar Kaur, two sons namely Kartar Singh and Harnam Singh and four daughters Harbans Kaur, Pritam Kaur, Charanjit Kaur and Jagjit Kaur. Jagjit Kaur was married to Sadhu Singh plaintiff No. 1 and out of their wedlock, Rupinder Kaur and Sukhjinder Singh, plaintiffs No. 2 and 3 respectively were born. Defendant No. 1 got sanctioned mutation No. 954 on 31.8.1990 regarding inheritance of Basawa Singh, claiming himself to be attorney of defendants

No. 2 to 6. No notice was given to the plaintiffs qua sanction of mutation.

Bachan Singh and Tara Singh Lambardars who attested the mutation do not belong to village Bahau where suit land is situated. They conspired with defendants No. 1 to 6 for sanction of mutation at the back of plaintiffs. The plaintiffs came to know about the same in second half of 1998 when they secured copies of documents. Defendant No. 1 claiming attorney of defendants No. 2 to 6 in terms of power of attorney dated 23.5.1985 executed at Gawalior (Madhya Pradesh) and dated 10.6.1986 registered with Sub Registrar, Abohar District Fazilka executed sale deed dated 31.3.1987 of 217/2058 share (8 kanal-5 marlas) in favour of Chaman Lal and others. He executed another sale deed dated 30.5.1991 as an attorney of defendants No. 2 to 6. The plaintiffs have no concern with the sale deeds qua shares of other co-sharers in suit land. Chaman Lal one of the purchasers under sale deed dated 31.3.1987 has died and is survived by defendants No. 16 to 22. Defendants No. 23 and 24 had purchased the suit land from defendants No. 16 to 20. The land purchased by Mukhtiar Singh and Joginder Singh vide sale deed dated 31.3.1987 has further been sold to defendant No. 21, hence the suit.

Defendants No. 1, 7 to 13 filed the written statement resisting claim of plaintiffs-appellant. They raised preliminary objections qua locus standi; cause of action; limitation; maintainability of the suit in present form; suit being not properly valued for the purpose of court fee and jurisdiction and bad for non-joinder of necessary parties. They have denied that Jagjit Kaur was daughter of Basawa Singh and plaintiffs are entitled to 1/6th share in suit land being successors-in-interest of said Jagjit Kaur.

Defendants No. 2, 4 to 6 filed separate written statement. They denied that Ishar Kaur was widow of Basawa Singh with further averment that real name of Ishar Kaur was Kishan Kaur. Jagjit Kaur was the daughter of Basawa Singh and she was predecessor-in-interest of the plaintiffs.

The trial court framed issues, reproduced in para 5 of the judgment of said court. The evidence adduced by the parties finds reference in para 6 thereof. The trial court negated plea of the plaintiffs-appellant that Jagjit Kaur was the daughter of Basawa Singh and entitle to 1/6th share in suit land, admittedly left behind by Basawa Singh, on the basis of natural succession and consequently challenge to sales in respect of land in question to the extent of share of Jagjit Kaur was rejected and the suit was dismissed.

Counsel for the appellant would argue that Basawa Singh was residing in Pakistan and all the children of Basawa Singh were born in Pakistan, therefore, the plaintiffs were rendered handicap to produce documentary evidence with regard to birth of Jagjit Kaur out of relationship between Basawa Singh and his wife. It is further argued that Sh. Basawa Singh died on 23.4.1964 but mutation in regard to suit land was sanctioned on 31.8.1990 and that too after death of Jagjit Kaur on 27.1.1982. It is further argued that mutation was entered and sanctioned at the behest of Gurbachan Singh defendant No. 1 being an attorney of defendants No. 2 to 6 who are the brothers and sisters of late Jagjit Kaur. It is further argued that there is no evidence on record that defendants No. 2 to 6 ever made any representation before any public functionary/ competent authority with regard to legal heirs of Sh. Basawa Singh or to say that they ever proclaimed

that Jagjit Kaur was not daughter of Basawa Singh. It is further argued that defendants No. 2, 4 to 6 filed the written statement admitting Jagjit Kaur as one of the daughters of Basawa Singh and Sh. Basawa Singh having left behind his widow and six children when he died on 24.3.1964. It is argued with vehemence that both the courts have failed to appreciate testimony of Harnam Singh defendant No. 2 in right perspective which is more than sufficient to establish that Jagjit Kaur was daughter of Basawa Singh and plaintiffs are the husband and children of said Jagjit Kaur who died in January 1982. It is submitted that total land in dispute is approximately 15-16 kanals and share of Jagjit Kaur would be less than 3 kanals, therefore, the question of defendants No. 2 to 6 having connived with the plaintiffs to cause loss to purchasers of the suit land does not arise more particularly in the circumstances that sale deed executed by defendants No. 2 to 6 in respect of their shares is not the subject matter of challenge in the suit either at their instance or otherwise.

Another submission made by counsel is that the trial court answered issue No. 9 pertaining to non-joinder of necessary parties against the appellant-plaintiffs. The Appellate Court did not advert to findings of the trial court on issue No. 9. It is further argued that since all the persons in whose favour the suit property has been alienated from time to time have been impleaded as a party, findings of the trial court on issue No. 9 cannot sustain and liable to be set aside.

Counsel for respondents No. 1, 7 to 13 has supported consistent findings recorded by the courts rejecting plea of the appellant-plaintiffs that Jagjit Kaur was also one of the daughters of late Basawa Singh. However,

he has fairly conceded that findings of the trial court on issue No. 9 are not correct as the appellant had impleaded all the necessary parties whose presence is required for complete and effective adjudication of the matter in controversy. It is argued that as defendants No. 2 to 6 have been left with no right or interest in suit land on the basis of sale deeds executed by their duly constituted attorney Sh. Gurbachan Singh defendant No. 1, admission of defendants No. 2 to 6 with regard to their relationship with Jagjit Kaur carries no weight.

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

Findings of the trial court on issue No. 9 are ordered to be set aside, in view of concession recorded by counsel for contesting respondents. As a consequence, issue No. 9 is answered in favour of the appellant-plaintiffs and against the defendants.

The whole controversy revolves around the question, whether Jagjit Kaur was also one of the daughters of Basawa Singh, erstwhile owner of suit land in regard whereof mutation No. 954 dated 31.8.1990 was sanctioned in favour of defendants No. 2 to 6 being sons and daughters of said Basawa Singh.

Counsel for the respondents has not disputed that total land, subject matter of the sale deeds is approximately 16 kanals and the appellant-plaintiffs have asserted their claim to 1/6th share as Basawa Singh has six class-I heirs namely Jagjit Kaur and defendants No. 2 to 6 as his widow also passed away later. Defendants No. 2 and 4 to 6 filed written statement admitting that Jagjit Kaur was also one of the daughters of late

Sh. Basawa Singh. Not only this, Harnam Singh defendant No. 2 appeared in the witness box and re-asserted that Ms. Jagjit Kaur was daughter of Basawa Singh. He was cross examined at length by the contesting defendants and confronted with various facts in respect of status of the plaintiffs, marriage of Jagjit Kaur and Sadhu Singh, birth of their children, marital status of plaintiffs No. 2 and 3 and families of other children of Sh. Basawa Singh. Counsel for respondents has failed to point out any such fact elicited in cross examination of Harnam Singh that can create a slightest doubt to hold that his testimony is not worthy of credence and reliance. Harnam Singh stated that Jagjit Kaur was a student of Girls Middle School in Shekhpur. The plaintiffs examined a witness from the said school to prove that Jagjit Kaur was a student of said school and her father's name is mentioned as Basawa Singh. The appellant also examined Udham Singh PW1 to prove relationship of Jagjit Kaur and Basawa Singh. It has been proved on record that Sadhu Singh and Jagjit Kaur got married in the year 1961. Kartar Singh eldest son of Basawa Singh was born in Pakistan sometime in middle of 1930. In the given circumstances, it is difficult to expect from a relative to know minute details of family affairs of Basawa Singh particularly the events that took place in Pakistan. Both the courts have proceeded to find out faults in testimony of Udham Singh without appreciating that his statement was recorded in November 2000 and he narrated about family affairs of Basawa Singh that took place about 40 years before his deposition in the court. A comparative analysis of testimony of Udham Singh PW1 and Harnam Singh PW would reveal that they have corroborated each other on most of the material particulars in respect of

family affairs of Sh. Basawa Singh. There is nothing on record suggestive of the fact that defendants No. 2 to 6, sons and daughters of Basawa Singh ever made a representation before any authority whereby they excluded name of Jagjit Kaur to be one of the class-I heirs of late Sh. Basawa Singh. The mutation qua inheritance of Basawa Singh was sanctioned in the year 1990 and the same was got entered by Gurbachan Singh defendant No. 1 being an attorney of defendants No. 2 to 6. There is no evidence adduced by the contesting defendants that Ms. Jagjit Kaur was the daughter of a person other than Basawa Singh. As a matter of fact, the contesting defendants failed to adduce any tangible evidence to rebut testimony of Harnam Singh who was the best person to depose about family members of Sh. Basawa Singh and family affairs of Sh. Basawa Singh and his progeny.

The Appellate Court did not bother to examine statements of the witnesses or evidentiary value thereof while affirming findings of the trial court. The Appellate Court miserably failed to discharge its statutory obligation, being the final court of fact, to record its judgment on the basis of materials on record.

As has rightly been argued by counsel for the appellant, defendants No. 2 to 6 would not be the beneficiary even if plea of the plaintiffs is accepted because the sale deeds in respect of suit property would be vitiated only to the extent of share of Ms. Jagjit Kaur in case plea of the appellant is accepted that she was also one of the class-I heirs of deceased Basawa Singh as sale deeds executed by other co-sharers to the extent of their share are not under challenge. In view of the above, findings of the courts negating plea of the appellant with regard to Jagjit Kaur being

daughter of Basawa Singh and entitle to 1/6th share in suit land suffer from misreading of evidence and failure to consider material evidence in right perspective, thus, cannot sustain. On the contrary, there is sufficient evidence to establish on the basis of balance of probability that Jagjit Kaur was one of the class-I heirs of late Sh. Basawa Singh, therefore, entitle to 1/6th share in the land in question. The appellant-plaintiffs being class-I heirs of Ms. Jagjit Kaur are entitle to succeed to 1/6th share of Ms. Jagjit Kaur on the basis of natural succession. As a consequence, sale of suit land to the extent of share of Ms. Jagjit Kaur is null and void and has no bearing/affect on right of the appellant-plaintiffs. As a natural corollary, the appellant-plaintiffs are declared to be owners of suit land to the extent of 1/6th share and entitle to joint possession thereof with their co-sharers on the basis of sale(s) aforesaid.

In view of what has been discussed hereinbefore, the appeal is allowed. The judgments and decrees passed by the courts are set aside. Suit filed by the appellant-plaintiffs is decreed to the effect that they are declared to be co-owners in suit land to the extent of 1/6th share and as such they shall be entitle to joint possession thereof to that extent. The parties are left to bear their own costs.

(Rekha Mittal)
Judge

2.9.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No