

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

RSA No.314 of 2011 (O&M)

Date of Decision:31.05.2019

Jagseer Singh

.....Appellant

Versus

Buta Singh @ Bitu and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Sonia G. Singh, Advocate
for the appellant.

Mr. Lovepreet Singh, Advocate
for Mr. Gaurav Sharma, Advocate
for respondents no.1 to 3.

LISA GILL, J.

Appellant-defendant is aggrieved of judgement and decree dated 05.06.2009, passed by learned Addl. Civil Judge (Sr. Division), Barnala, as well as judgement and decree dated 18.01.2010, passed by the learned Additional District Judge, Barnala.

Brief facts necessary for the adjudication of the case are that plaintiff-Piara Singh, through his LRs and Jarnail Singh @ Jaila, now represented by his legal representatives, filed a suit for declaration to the effect that the plaintiffs are co-owners and co-sharers of the property as detailed in the plaint with a prayer for permanent injunction restraining the defendants from alienating the suit land beyond their share or of any particular khasra numbers and from taking forcible possession of the part of the suit property in possession of the plaintiffs. It is pleaded by the plaintiffs that the suit property as detailed in the plaint, is under the joint ownership of the parties to the suit and has never been subjected to partition. Defendant

alleged to have purchased land measuring 10 Kanals 18 Marlas out of the suit property from the co-sharer-Ajmer Singh, who is the brother of the plaintiffs vide sale deed dated 29.04.2005. The defendant, it is pleaded, claimed to have purchased specific parcels of land i.e. khasra number 84//8/1 (6-5), 13/1 (4-13). Possession of this land, it is however claimed, was never conveyed to the defendant neither was his vendor-Ajmer Singh ever in exclusive possession of this land. Defendant was threatening to take possession of the suit property on the basis of the sale deed dated 29.04.2005 and he tried to interfere in possession and cultivation of the land by the plaintiffs. Defendant, it is pleaded also threatened to get the mutation sanctioned on the basis of the sale deed and further alienate the suit property. Hence the suit was filed.

Present appellant i.e., the defendant resisted the suit while raising various preliminary objections. Averments on merits were denied. It is stated that the defendant had purchased share of the suit property vide sale deed dated 29.04.2005. He is thus entitled to get the mutation sanctioned on the basis of the sale deed. Plaintiffs, it is stated had approached the police where a panchayati compromise had been effected according to which the plaintiffs admittedly had no concern with the land measuring 10 Kanals 18 Marlas purchased by the defendant. Dismissal of the suit was prayed for.

Replication was filed by the plaintiff. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether suit property is joint holding and plaintiffs are entitled to injunction as prayed for?OPP
2. Whether plaintiffs have no locus standi to file the suit? OPD
3. Whether suit is not maintainable in the present form? OPD

4. Whether plaintiffs are estopped from filing the suit by their act, conduct and admission?OPD
5. Whether suit is infructuous and defendant is in specific possession over land measuring 84//8/1(6-5) and 13/1(4-13) on the basis of sale deed dated 29.04.2005?OPD
6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on appreciation of the evidence on record concluded that the suit property was joint and had not been partitioned. By virtue of sale deed dated 29.04.2005, defendant had only purchased a share in the suit property. Suit was accordingly decreed and defendant was restrained from alienating the suit property beyond his share or by way of sale of specific khasra numbers as detailed above without following the due course of law.

Appeal preferred by the defendant was dismissed by the learned Additional District Judge, Barnala vide impugned judgement and decree dated 18.01.2010.

Aggrieved therefrom, present appeals have been filed by the appellant-defendant.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in decreeing the suit filed by the plaintiffs-respondents. It is submitted that the appellant had purchased specific parcels of land vide sale deed dated 29.04.2005, Ex.D-1. It is further submitted that jamabandi for the year 1999-2000, Ex.P-1 and the khasra girdawari, Ex.P-2, prove the exclusive possession of the defendant/his predecessor-in-interest over the property in question. It is submitted that the witnesses produced by the defendant-appellant have clearly proved the

exclusive possession of the present appellant. Possession of specific khasra numbers was delivered to the appellant-defendant at the time of the execution of the sale deed dated 29.04.2005. It is thus prayed that this appeal be allowed and the suit filed by the plaintiffs-respondent be dismissed throughout.

Learned counsel for the respondents, on the other hand refutes the arguments as raised by learned counsel for the appellant and submits that well reasoned and logical judgements and decrees have been passed by the learned Courts below, which should be upheld. It is thus prayed that this appeal be dismissed and the judgements and decrees passed by the learned Courts below be upheld.

I have heard learned counsel for the parties and have perused the file with their assistance.

Learned counsel for the appellant is unable to deny that it is borne out from the evidence on record that the suit property is under the joint ownership of the parties. The present appellant has purchased the property from Ajmer Singh, who is admittedly the brother of the plaintiffs, vide sale deed dated 29.04.2005, Ex.D-1. A perusal of the jamabandi for the year 1999-2000, does not in any manner indicate the exclusive possession of the predecessor-in-interest of the appellant-defendant. Reference to the khasra girdawari for the year 2004-05 is also of no avail to the appellants. In-fact, the said documents cement the case of the plaintiffs to the effect that the property in question has never been partitioned and is in the joint ownership of the co-sharers. Furthermore, as per the recitals in the sale deed dated 29.04.2005, it emerges that Ajmer Singh has sold his share in the suit

property, though, it is mentioned that the possession of the particular khasra numbers have been given to the purchaser. Once it is admitted that partition of the property has not taken place, it is a settled position of law that ownership rights to specific parcels of land cannot be conveyed notwithstanding any recital in the sale deed.

In the facts and circumstances of the case, both the learned Courts below have rightly recorded that it is Karnail Singh, who is recorded to be in possession of the property in dispute and the ownership rights have been mutated in favour of the plaintiffs and Ajmer Singh. At no point of time was Ajmer Singh reflected to be in exclusive possession of the suit property. Thus, it is not open to the appellant-defendant to assert his exclusive possession of the suit property, which is admittedly joint between the co-owners. Defendant by asserting his exclusive possession of the suit property to the exclusion of other co-owners, clearly amounts to ouster and is adverse to the interest of the co-owner. Therefore, it is rightly held by the learned Additional District Judge, Barnala, that there could not be a bar for extending the relief of injunction to the plaintiffs.

Learned counsel for the appellant-defendant is unable to point out any question of law, much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below have returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

There is a delay of 229 days in re-filing of this appeal. Keeping

in view the fact that the matter has been adjudicated on merits, question of delay in re-filing of this appeal has been rendered academic. Application is accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 05.06.2009 and 18.01.2010 passed by the learned Additional Civil Judge (Sr. Division) Barnala and learned Additional District Judge, Barnala, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

31.05.2019
s.khan

[LISA GILL]
Judge

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