

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

RSA-2908-2012(O&M)

Date of decision:-26.3.2019

Makhan Singh (deceased) through LRs

...Appellant

Versus

Pritam Singh (deceased) through LRs.

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Nagra, Advocate
for the appellant.

Mr.Amit Arora, Advocate
for the respondent.

H.S. MADAAN, J.

Being of the view that defendant Pritam Singh had grabbed a part of land belonging to him bearing khasra Nos.464/2(0-9), 465/2(2-9) situated at village Kaka Kandiala, Tehsil Tarn Taran, Amritsar, the plaintiff got the land demarcated, which revealed that the defendant was in wrongful possession of 1425 square feet out of khasra No.464/2 and 6600 square feet out of khasra No.465/2 and he had raised construction thereon.

The land of khasra No.464/1 and 465/1 adjoins the land of plaintiff bearing those khasra numbers, in that way the defendant had encroached upon the land measuring 1 kanal 9 marlas belonging to the plaintiff without any right. Feeling aggrieved the plaintiff had knocked at the door of the Court by way of filing the civil suit.

On notice the defendant appeared and filed written statement contesting the suit, raising preliminary objections that the plaintiff had no concern with the suit land; that the suit was not properly valued for the purpose of Court fee and jurisdiction; that originally one Basant Singh was owner of the land and he exchanged the same with Sadhu Singh; that mutation in that respect was sanctioned in favour of Sadhu Singh; that Basant Singh had died and his estate devolved upon Makhan Singh, mutation in that regard was sanctioned; that Basant Singh vide registered sale deed dated 17.11.1976 had sold 8 kanals of land out of khasra No.464 Min South (2-9) and 465 Min South(5-11) for a sum of Rs.25,000/- to Pritam Singh son of Udham Singh to the extent of 3/4th share and Mukhtar Singh son of Udham Singh to the extent of 1/4th share; that subsequently Sadhu Singh sold 2 kanals 10 marlas of land bearing khasra No.464 vide registered sale deed dated 31.1.1985 to Pritam Singh for Rs.6,000/-; that Pritam Singh present defendant is in possession of the land as co-owner; that the boundaries of the land mentioned in the sale deed correspond to the suit land; that the plaintiff is running a school having constructed a huge building in the property in dispute and on other land; that the plaintiff had been observing the defendant raising the construction but he did not raise any objection; that the plaintiff along with Sadhu Singh had

collusively got the land partitioned by not impleading Pritam Singh as party and mutation with regard to partition had been sanctioned. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for possession as prayed for? OPP.
2. Whether plaintiff has got no concern with suit land and Pritam Singh being owner in possession is entitled for the suit land as he has purchased the same through registered sale deed dt. 17.11.76. If so to its effect? OPD.
3. Whether suit is not properly valued for the purposes of Court fee and jurisdiction? OPD.
4. Whether on the basis of wrong facts the mutation of parties were sanctioned illegally? OPD.
5. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW1 besides examining Sh.Chanan Singh as PW2, Sh.Maghwinder Singh, Patwari Halqa as PW3, Sh.Harbhajan Singh as PW4, Sh.Baldev Singh as PW5, Sh.Manjit Singh as PW6.

On the other hand, the defendant examined Sh.Kulwant Singh as DW1, Sh.Harbhajan Singh as DW2, Sh.Kashmir Singh as DW3, Sh.Harbinder Singh as DW4, Sh.Patwant Singh as DW5, Sh.Harwinder Singh as DW6, Sh.Pritam Singh as DW7, Sh.Jaswinder Singh as DW8, Sh.Kulwant Singh as DW9, Sh.Lakhbir Singh as DW10, Sh.Subegh Singh as DW11, Sh.Tarsem Singh as DW12, Sh.Pritam Singh as DW13,

Sh.Labh Singh as DW14 and Sh.Jagdev Singh as DW15.

After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiff, issue No.3 against the defendant, issue No.4 against the defendant. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 1.9.2011.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Tarn Taran which was assigned to Additional District Judge, Tarn Taran, who vide judgment and decree dated 5.4.2012 dismissed the same.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

On getting notice of regular second appeal, the respondent/defendant has appeared before this Court through counsel.

It is pertinent to mention here that the respondent has expired and is being represented by his legal representatives.

I have heard learned counsel for the parties besides going through the record and I find that the dispute in question has not been decided in a proper and appropriate manner.

The plaintiff claims himself to be owner of Khasra No.464/2(0-9), 465/2(2-9) situated at village Kaka Kandiala, whereas defendant is stated to be owner of the adjoining land having khasra

No.464/1 and 465/1. According to the plaintiff, the defendant has encroached upon 1425 square feet of his land out of Khasra No.464/2 and 6600 square feet of land out of khasra No.465/2 as revealed from the demarcation report. The trial Court has rejected the demarcation report. The plaintiff had examined Sh.Chanan Singh, Patwari PW1, who had produced the roznamcha for the year 2004-05 and copy of report No.748 dated 6.6.2005. PW3 Sh.Maghwinder Singh, Patwari Halqa village Mirakot had deposed that on 3.3.2005, he along with Harbhajan Singh, Kanungo had gone to the spot and demarcated land bearing khasra No.464/2, 465/2 owned by Sh.Makhan Singh son of Basant Singh and that demarcation report was entered as report No.748 in the DDR for the year 2004-05. Sh.Harbhajan Singh, Office Kanungo appearing as PW4 had stated that on the application of Makhan Singh to the Tehsildar, which was marked to him, he had gone to the spot and carried out demarcation of khasra numbers in question making an entry in the DDR at serial No.748. PW5 Baldev Singh and PW6 Manjit Singh deposed regarding defendant having raised illegal construction over the land of plaintiff measuring 1 kanal 9 marlas.

The trial Court had rejected the report of the Kanungo for the following reasons:

- (i) that in the jamabandi for the year 2002-03 Ex.D11 khasra No.465/2(2-9) has been recorded as ownership of Makhan Singh son of Basant Singh but its nature as Gair Mumkin Sarak(road) and Kanungo has not been disclosed with regard to said character of the land and how did he came to know that it was in possession of the

defendant;

(ii)that the measurement had not been carried out using Zarib;

(iii)that the Kanungo had not measured the other properties adjoining the suit property;

(iv)that the suit property bearing khasra No.464/2(0-9) was sold by Sadhu Singh in favour of defendant Pritam Singh, therefore Makhan Singh was not left with any right, title or interest in the said khasra number view of mutation No.1912 having been entered on the basis of exchange made by Basant Singh in favour of Sadhu Singh; and

(v)that proper procedure was not followed by PW4 Harbhajan Singh, Kanungo while carried out the demarcation.

Learned Additional District Judge, Tarn Taran in appeal has agreed with the trial Court in that regard though in para No.11 additional issue No.4B - *Whether in the alternative, defendant has become owner of the suit land by adverse possession as his possession is from 17.11.1976, adversely, to the knowledge of the plaintiff? OPD.*, was decided in favour of plaintiff and against the defendant. But then that by itself suggests that defendant admits himself to be in wrongful possession of area belonging to the plaintiff. The Appellate Court has further observed that defendant has established himself to be owner in the property in dispute and if he is in possession of excess area as claimed by the plaintiff, the plaintiff has remedy to file suit for partition. But the lower Appellate Court lost sight of the fact that in the written statement, defendant has admitted the factum

of partition having taken place and mutation sanctioned on the basis thereof, though challenging its legality stating that no notice was issued to him. The lower Appellate Court has referred to 'Farad Badar' placed on record as Ex.P6, as a result of which nature of the land at the spot was found to be 'Chahi' instead of 'Gair Mumkin Sarak' but that document was rejected for the reason that it had come into being during pendency of the suit. However, neither the trial Court nor the Court of Additional District Judge, Tarn Taran thought it proper and appropriate to get the land demarcated again for proper and final adjudication of the controversy between the parties.

In my considered view it would be in the interest of justice, proper and appropriate, to finally decide the dispute between the parties, if the land is got demarcated through the Court.

The judgments and decrees passed by the Courts below are hereby set aside, with the result the case is remanded to the trial Court with a direction to appoint some Senior Revenue Officer having experience in carrying out demarcation preferably of the rank of Tehsildar/Naib Tehsildar to visit the spot and carry out the demarcation of khasra numbers in question as per High Court rules and orders and instructions of Financial Commissioner, Punjab on payment of adequate fee by the plaintiff, which is to be determined by the trial Court. Such officer shall visit the spot after giving due notice to both the parties and then carry out demarcation submitting his report in the Court. The Court may allow filing of objections, if any, by the aggrieved party and thereafter examine such revenue officer as a witness and then after

hearing both the parties to decide the case afresh by giving issue-wise findings.

The parties are directed to appear before the trial Court on 23.4.2019.

With above observations, the appeal stand disposed of accordingly.

26.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No