

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

RSA No.5873 of 2015(O&M)

Date of decision: 10.9.2019

Mohinder Singh and others

.....Appellants

VERSUS

Nachhattar Kaur through LRs and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Swaich, Advocate for the appellants.

Mr. G.S. Nagra, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the appellants/plaintiffs for declaration and permanent injunction was dismissed by the trial Court vide judgment and decree dated 03.04.2013 that came to be affirmed in appeal by the Additional District Judge, Ludhiana vide judgment and decree dated 13.07.2015.

In brief, case of the appellants/plaintiffs is that previously Bachan Singh, predecessor in interest of defendants was co-owner in joint possession of land measuring 2 kanal 8 marlas situated at village Nasrali. Vide sale deed dated 08.06.1960, Bachan Singh sold suit land measuring 6½ marlas comprised in rectangle No.51 killa No.16 as per the jamabandi for the year 1960-61 to Sahib Singh, father of the plaintiffs and delivered actual possession to Sahib Singh. Plaintiffs were joint in mess with Sahib

Singh. Sahib Singh was also one of the co-owners in land measuring 2 kanal 8 marlas. Bachan Singh died in the year 1991-92 leaving behind defendants as his legal heirs. Sahib Singh also died leaving behind the plaintiffs as his legal heirs. Sahib Singh executed Will dated 07.01.1972 in favour of the plaintiffs and his widow Gurnam Kaur. Gurnam Kaur executed registered Will dated 10.01.1991 in favour of plaintiffs. The plaintiffs, when they obtained jamabandi for the years 2000-01, came to know that mutation in the names of plaintiffs has not been sanctioned. The plaintiffs are in actual physical possession of the suit land. The defendants are threatening to alienate and dispossess the plaintiffs from the suit land for which they have no right. Hence the suit.

The respondents/defendants filed the written statement taking preliminary objections in respect of maintainability; locus standi and that sale deed dated 08.06.1960 is false and fictitious document. It was never implemented in the revenue records. However, it has been admitted that Bachan Singh, Sahib Singh and Teja Singh were co-sharers in land measuring 2 kanal 8 marlas and share of Bachan Singh is entered in the jamabandi for the year 1960-61. Bachan Singh was separate in mess and residence from Partap Singh and Teja Singh. He remained in separate and exclusive possession of 2/5th share in land out of killa Nos.26, 27 of rectangle No.51. After death of Bachan Singh, defendants are in possession of land left behind by Bachan Singh. All other material averments raised in the plaint have been denied with a prayer for dismissal of the suit.

The plaintiffs filed replication reiterating their stand taken in plaint while controverting the averments raised in the written statement.

The trial Court framed issues reproduced in para 3 of judgment of the said Court. Parties were afforded opportunity to adduce evidence. Having heard counsel for the parties in the light of materials on record, the trial Court rejected claim of the appellants/plaintiffs that they are owners in possession of suit land or entitle to declaration and permanent injunction as prayed for. Eventually, the suit was dismissed leaving the parties to bear their own costs. As has been noticed hereinbefore, the appeal preferred by unsuccessful appellants/plaintiffs did not find favour with the Additional District Judge, Ludhiana as the Appellate Court affirmed findings of the trial Court without variance.

Still feeling dis-satisfied, the appellants/plaintiffs have filed the instant appeal.

Counsel for the parties have fairly conceded that primary dispute involved in the present appeal is whether the plaintiffs have become owner of 2/5 share of khasra No.51//26 earlier co-owned by Bachan Singh to that extent on the basis of unregistered sale deed dated 08.06.1960.

Counsel for the appellants would argue that as per jamabandi for the year 1960-61, relevant in the present context, Bachan Singh, Sahib Singh and Teja Singh are recorded to be co-owners in joint possession of land comprising khasra No.51//26 (0-16) described as *gair mumkin ahata chah dharmuwula*. It is further argued that since all the co-sharers including Sahib Singh son of Partap Singh were recorded to be in joint possession of land of aforesaid khasra number, every co-sharer would be deemed to be in possession of every inch of joint land unless it is proved that a co-sharer is in exclusive possession of the entire joint land or a part

thereof. According to counsel, since Sahib Singh was already in possession of land of aforesaid khasra number, there was no occasion for Bachan Singh to deliver possession of the suit land to Sh. Sahib Singh nor claim of the appellants/plaintiffs qua ownership of suit land can be denied. It is vehemently argued that both the Courts have failed to appreciate the controversy in right perspective and seriously erred by holding that since there was no delivery of property sold through an unregistered sale deed, Sahib Singh did not acquire ownership rights on the basis of sale deed in question when examined in the light of provisions of Section 54 of the Transfer of Property Act, 1882 (in short 'the Act'). He would further apprise the Court that even in the subsequent jamabandis for the years 1965-66, 1970-71, 1975-76, 1980-81, 1985-86 Sahib Singh and Teja Singh sons of Partap Singh are recorded to be co-sharers and in joint possession along with Bachna Singh son of Naraina in respect of the disputed khasra number. In addition, it is argued that since the seller and purchaser under the sale deed dated 08.06.1960 were co-sharers in joint possession of land of khasra No.51//26, failure of Sahib Singh or after his death of appellants/plaintiffs to get mutation sanctioned on the basis of aforesaid sale deed would neither prejudice right of the plaintiffs/appellants nor enure to benefit of respondents as mutation neither creates nor extinguishes title to the property and the same is entered for fiscal purposes to facilitate collection of land revenue.

Counsel representing the respondents, on the contrary, has supported consistent findings recorded by the Courts with the submission that since actual possession of the alleged sold land by Bachan Singh in favour of Sahib Singh in view of sale deed propounded by the plaintiffs,

was never delivered to Sh. Sahib Singh, the appellants/plaintiffs cannot be heard to say that ownership rights qua 2/5 share of Sh. Bachan Singh in the disputed khasra number were conferred upon Sh. Sahib Singh and after death of Sahib Singh, same were succeeded by the plaintiffs and Smt. Gurnam Kaur. It is further argued that the Courts have rightly held by relying upon cited judgments that expression 'delivery of property' used in Section 54 of the Act means actual delivery of possession of property, therefore, the appellants/plaintiffs cannot assert their right of ownership qua share of Bachan Singh on the basis of sale deed dated 08.06.1960.

Another submission made by counsel is that appellants have failed to prove that they are in possession of land of the share of Bachan Singh at the time of institution of suit in the year 2006. It is argued that as per jamabandi for the year 2005-06 Ex.D12, the plaintiffs are not even recorded to be co-sharers in khasra No.51//26, therefore, question of their being in joint possession of land of said khasra number does not arise. It is further argued that as the plaintiffs have not been recorded to be in joint possession of land of aforesaid khasra number, simplicitor suit for declaration without claiming relief of possession in respect of 2/5 share of Bachan Singh is clearly hit by explanation appended to Section 34 of the Specific Relief Act, 1963.

Counsel for the appellants, in reply, would argue that if claim of the plaintiffs with regard to their ownership qua 2/5 share of Bachan Singh is allowed, they would become joint owners in khasra No.51//26 (0-16) and they would be entitle to recover its actual possession by taking recourse to partition proceedings, in accordance with law. It is further argued that since Bachan Singh or his successors in interest have not been

recorded to be in exclusive possession of the aforesaid khasra number to the extent of 2/5 shares of Sh. Bachan Singh, there was no occasion for the appellants to seek delivery of possession of suit land.

I have heard counsel for the parties, perused the paper-book and copies of documents supplied during the course of hearing, correctness whereof has been vouched by counsel for the parties.

Indisputably, Sahib Singh was one of the co-sharers in land comprising khasra No.51//26 measuring 16 marlas *gair mumkin ahata chah dharmuwula*. Sh. Bachan Singh son of Narain, predecessor in interest of the defendants, was also co-owner in the said khasra number to the extent of 2/5 shares, as has been reflected in the jamabandi for the year 1960-61 Ex.P1/A and subsequent jamabandis on record. There is no denial that well to which the disputed land belonged as *ahata aam* is not in use being dry for the past several years rather decades.

The question for consideration is that since the sale deed propounded by the appellants is an unregistered document, whether the appellants can claim ownership qua share of Bachan Singh in the disputed khasra number in absence of evidence with regard to actual delivery of possession of his share by Bachan Singh.

Counsel for the respondents has not disputed correctness of entries made in the jamabandis produced on record either at the instance of the appellants or respondents. The first jamabandi relevant in the present context, is Ex.P1/A of the year 1960-61. In the said jamabandi, column No.4 records co-ownership of Bachan Singh, Sahib Singh and Teja Singh of disputed khasra number in which Bachan Singh was co-owner to the extent of 2/5 share and Sahib Singh and Teja Singh to the extent of 3/5

share and all the co-owners have been recorded to be in joint possession of the same. Counsel for the respondents has not disputed that every co-sharer is deemed to be in joint possession of every inch of joint land unless there is evidence on record that a co-sharer is in exclusive possession of the same. In the given circumstances, there was no question of Bachan Singh delivering possession qua his share sold on the basis of unregistered sale deed in favour of Sh. Sahib Singh. That being so, Sahib Singh being already in possession of land of share of Bachan Singh as well would acquire complete rights qua share of Bachan Singh on the basis of sale deed proved on record. In this view of the matter, I find merit in contention of the appellants that the Courts have committed a gross error rather perversity by failing to consider that Sahib Singh was already in possession of land of the share of Bachan Singh as well being co-sharer, therefore, there was no question of delivery of property by him in favour of Sahib Singh.

The Courts have construed provisions of Section 54 of the Act literally but without appreciating the position that since purchaser under the unregistered sale deed is one of the co-sharers recorded to be in joint possession of joint land, he is deemed to be in possession of land of the share of Bachan Singh which was purchased by Sahib Singh through sale deed dated 08.06.1960. Counsel for the respondents has failed to cite any precedent that even if sale has been made by one of the co-owners in favour of other co-owner recorded to be in joint possession of joint land, the co-owner selling the land on the basis of unregistered sale deed has to deliver actual physical possession of the sold portion in order to make the sale complete and valid in the eye of law.

This brings the Court to contention raised by counsel for the respondents that suit for declaration in respect of ownership is not maintainable without seeking relief of possession. Perusal of jamabandi for the year 2005-06, relevant at the time of filing of the suit, makes it evident that all the co-sharers of the disputed khasra number are recorded to be in joint possession of the said land. Since successors in interest of Bachan Singh son of Narain were not recorded to be in exclusive possession of land measuring 6½ marlas out of total land measuring 16 marlas of disputed khasra number, the appellants/plaintiffs cannot seek recovery of possession of that land. Conversely, if claim of the appellants with regard to ownership qua share of Bachan Singh to the extent of 2/5 shares in the disputed khasra numbers is accepted, they would become co-owners in joint possession of disputed khasra number. In this view of the matter, contention that the suit is not maintainable or is hit by Section 34 of the Specific Relief Act, 1963 is bereft of merit, thus, rejected.

The fact that Sahib Singh or after his death the appellants did not get mutation sanctioned on the basis of unregistered sale deed dated 08.06.1960 would be of no legal consequence to deny them ownership of purchased land. There is no denial that mutation is not a document of title as it neither creates nor extinguishes title to the property but is recorded to straighten the revenue records for all intents and purposes. In view of the above, judgments and decrees passed by the Courts cannot be allowed to sustain and are accordingly set aside. Resultantly, the appellants/plaintiffs are declared to be co-owners in joint possession to the extent of 2/5 share in khasra no.51//26 (0-16) which was earlier co-owned to that extent by Sh. Bachan Singh.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

SEPTEMBER 10, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no