

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

RSA No.5644 of 2014(O&M)

Date of decision: 30.8.2019

Balwinder Singh and othersAppellants

VERSUS

Balbir Singh and othersRespondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Vipin Mahajan, Advocate for the appellants.

None for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 03.07.2014 passed by the Additional District Judge, Gurdaspur whereby appeal against judgment and decree dated 07.02.2011 passed by the Civil Judge (Junior Division), Gurdaspur (hereinafter referred to as 'the trial Court') was allowed, judgment and decree impugned was set aside and suit filed by the respondent/plaintiff for declaration in respect of his share in the suit land was decreed.

The facts relevant for disposal of present appeal are that respondent/plaintiff staked his claim to land measuring 7 kanal 4 marlas comprised in killa No.12/1 (3-12) and 11/2 (3-12) situated at village Gunnopur District Gurdaspur as per sale deed dated 20.03.1978 to the extent of 78/144th share with the averments that defendant No.3 Buta Singh (since deceased) represented by his LRs (appellants herein) has no right,

title or interest in the suit land and mutation No.1103 (sic) is illegal, null and void and is not binding on the plaintiff/respondent. It is averred that suit land was earlier owned and possessed by Malla Singh, father of plaintiff and defendants No.1 and 2. Malla Singh sold the suit land to plaintiff and defendants No.1 and 2 vide registered sale deed dated 20.03.1978 to the extent of 78/144th share to plaintiff, 39/144th to defendant No.1 and 27/144th to defendant No.2.

Mutation No.732 was sanctioned in favour of plaintiff and defendants No.1 and 2 as per their shares on the basis of sale deed. The defendants without any right, title or interest are denying title of plaintiff on the basis of illegal mutation No.1103(sic), sanctioned at the back of plaintiff. The plaintiff or defendants never appeared before any Revenue Officer nor mutation bears their thumb impressions or signatures. Defendant No.3 in connivance with defendant No.2 has forged signatures/thumb impressions of plaintiff and defendant No.1 by impersonation.

Defendant No.1 filed the written statement admitting claim of the plaintiff. Defendant No.2 contested the suit and raised preliminary objections regarding suit being barred by time; plaintiff being estopped by his own act and conduct from filing the suit; plaintiff has concealed material facts from the Court and suit is bad for non-joinder of necessary parties. On merits, it is submitted that suit land was owned and possessed by father of plaintiff and defendants No.1 and 2 and by defendant No.3 to the extent of half share. The answering defendant is co-owner of suit property and the suit property is still joint and has not been partitioned so

far. The suit land along with other land measuring 24 kanal situated in village Gunnopur is part of joint holding. Father of answering defendant died in the year 1984. After his death, half share was devolved upon plaintiff, Nek Singh - defendant No.1 and answering defendant in equal share. The suit land was partitioned through family settlement dated 17.02.1986. Mutation bearing No.1003 dated 17.03.1986 was sanctioned as per family settlement dated 17.02.1986. The agreement of partition dated 17.02.1986 is in possession of plaintiff. During family partition, khasra No.11/2 (3-12) was bifurcated into new killa numbers i.e. 11/2/1 (1-0) and 11/2/2 (2-11). Killa No.11/2/1 (1-0) was allotted to defendant Buta Singh son of Dalip Singh and killa No.11/2/2 (2-11) was allotted to answering defendant along with his brothers i.e. plaintiff and defendant No.1. Since mutation has been sanctioned, answering defendant along with his brothers and Buta Singh are in possession of the abovesaid land as per family settlement.

Buta Singh – defendant No.3 (predecessor in interest of the appellants) filed a separate written statement almost in line with the averments raised by defendant No.2 by raising the plea of family settlement and mutation No.1003 being sanctioned in the presence of parties, on the basis of family settlement.

The trial Court framed issues reproduced in para 6 of the judgment of said Court. The parties adduced evidence referred to in para 8 and 9 of the judgment of trial Court. Having heard counsel for the parties in the light of materials on record, the trial Court dismissed the suit but the

first Appellate Court accepted the appeal that caused grievance to legal representatives of deceased Buta Singh (appellants herein).

Counsel for the appellants, at the outset, would inform that Buta Singh or his successors in interest have nothing to do with land comprising Khasra No.12/1 (3-12). He would further inform that appeal has been preferred by the appellants to express their grievance against rejection of their right qua land measuring 1 kanal out of khasra No.11/2 which was allotted to Sh. Buta Singh on the basis of family settlement dated 17.02.1986, on the basis whereof mutation No.1003 dated 17.03.1986 was sanctioned. It is further argued that mutation No.1003 makes reference to family settlement dated 17.02.1986 in column No.15 of the document Ex.P2 in respect whereof the entry was made by Surinder Singh Patwari dated 26.02.1986 examined as a witness by the defendants. The said entry was approved by the kanungo on 14.03.1986 and thereafter the mutation was sanctioned in a gathering. In column No.11 of document Ex.P2, one kanal of land of khasra No.11/2 is mutated in the name of Buta Singh and later this mutation was carried into effect in the jamabandi Ex.D2 for the year 1988-89 and Buta Singh was recorded to be owner and in possession of 1 kanal of land comprising killa No.11/2/1. It is further submitted that Nirmal Singh – plaintiff appeared in the witness box and in cross examination, he has virtually admitted plea of defendant No.2 and 3 with regard to partition dated 17.02.1986 and that in the said family partition, land measuring 1 kanal of khasra No.11/2/1 being allotted to Buta Singh and 11/2/2 (2-11) to his brother Nek Singh and Piara Singh. He has also admitted that since the date of family partition, his brother and

Buta Singh are coming in possession of separate land which fell to their share in family partition. It is vehemently argued that in view of clear admission with regard to family partition dated 17.02.1986 coupled with mutation sanctioned vide Ex.P2/D1 and entry in the subsequent jamabandi for the year 1988-89 Ex.D2, findings recorded by the first Appellate Court cannot be allowed to sustain being contrary to admission of Nirmal Singh and revenue documents on record.

Respondents No.1 to 4 and 6 failed to cause appearance despite service. However, appeal against respondent No.5 namely Piara Singh was dismissed as counsel for the appellants failed to implead his LRs as a report was received that Piara Singh has since passed away.

Counsel for the appellants, in response to a query, as to what is the effect of dismissal of appeal against respondent No.5, would state that since respondent No.5 did not contest claim of the appellants or their predecessor in interest namely Buta Singh in respect of land measuring 1 kanal out of khasra No.11/2, respondent No.5 need not to be heard in the matter so far as claim of the appellants is concerned. Perusal of the records would reveal that this submission made by counsel for the appellants is borne out from the records as defendant Piara Singh (defendant No.2 therein) in the written statement raised a specific plea controverting allegations qua challenge to mutation No.1003 and entitlement of Buta Singh to the extent of 1 kanal in khasra No.11/2.

Nirmal Singh in his cross examination has made vital admissions in favour of the appellants/Buta Singh. There cannot be dispute about settled position in law that admission made by the contesting

party is the best evidence unless retracted or explained away. A relevant extract from cross examination of Nirmal Singh, reads as follows:-

"I do not know whether vide agreement dated 17.02.86 we partitioned our joint land. I do not know whether the said agreement of partition was scribed at Kahnuwan or Gurdaspur. I do not know, if on the basis of that agreement of partition, mutation No. 1103 (sic) dated 17.03.1986 was sanctioned. I do not know, in whose possession that agreement is lying, that whether it is in my possession or in possession of any of my brother. I do not know, if killa No.11/2 (3-12) was bifurcated and new killa numbers were carved out i.e. 11/2/1 (1-0) and 11/2/2 (2-11). It is correct that during the family partition the land measuring 1 kanal of khasra No.11/2/1 was allotted to Buta Singh and 11/2/2 (2-11) was allotted to my brother Nek Singh and Piara Singh. The said family partition, during which the abovesaid land was allotted, took place during the life time of our father Malla Singh. It is correct that since the date of family partition, I, my brother Buta Singh are coming in possession of separate land which fell to our share in family partition. It is correct that entries were recorded in the jamabandi in 1984, as per the family partition. Volunteered in the year 1986 a wrong entry was incorporated in the jamabandi. I did not raise any objection regarding the wrong entry in the year 1986 as I came to know about that entry, now. It is correct that patwari

halqa make the entry of khasra girdwari in my name of the land, which is under my cultivation.”

Perusal of the aforesaid extract reveals that in the earlier part of cross examination extracted hereinbefore, Nirmal Singh feigned ignorance about agreement dated 17.02.1986 and mutation No.1103 (sic) dated 17.03.1986 and bifurcation of killa No.11/2 but later he virtually admitted the entire defence plea raised by defendants No.2 and 3 with which Nirmal Singh was confronted with. The conduct of Nirmal Singh of feigning ignorance in the earlier part of cross examination speaks volumes that he had not approached the Court with clean hands and tried to conceal more than revealing. Once Nirmal Singh has admitted that land measuring 1 kanal out of khasra No.11/2/1 was allotted to Buta Singh coupled with mutation No.1003 sanctioned in favour of Buta Singh to that effect on the basis whereof entry in the subsequent jamabandi Ex.D2 was made in favour of Buta Singh in respect of his ownership and in possession of khasra No.11/2/1 (1-0) Chahi, I find it difficult to sustain findings of the first Appellate Court accepting claim of the respondent/plaintiff in respect of khasra No.11/2 (3-12).

In view of the above, it can safely be held that judgment and decree passed by the first Appellate Court is liable to be modified to the extent that Buta Singh became owner and in possession of land measuring 1 kanal of khasra No.11/2 which was allotted khasra No.11/2/1 on account of bifurcation of khasra No.11/2 into two khasra numbers namely 11/2/1 and 11/2/2 and ordered accordingly.

In view of what has been discussed hereinabove, the appeal is allowed to the extent that Buta Singh is the owner and in possession of land measuring 1 kanal out of khasra No.11/2 now allotted khasra No.11/2/1. As a result, suit filed by the respondent/plaintiff in respect of khasra No.11/2 is partly dismissed to the aforesaid extent.

AUGUST 30, 2019

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

:

yes/no

yes/no

(REKHA MITTAL)

JUDGE