

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

**RSA No.6280 of 2018 (O&M)
Date of Decision:07.05.2019**

Gurminder Kaur

.....Appellant

Versus

Mohinder Pal Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Karan Garg, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant arrayed as defendant no.15 before the learned trial Court has filed this appeal being aggrieved of judgment and decree dated 27.04.2015, passed by the learned Addl. Civil Judge (Sr. Division), Moga, as well as judgment and decree dated 18.11.2017, passed by the learned Additional District Judge, Moga, whereby suit for declaration filed by the plaintiffs-respondents has been decreed.

Brief facts necessary for the adjudication of the case are that plaintiffs-respondents Mohinder Paul Singh and Kuldip Singh (arrayed as respondents no.1 and 2 in this appeal) filed a suit for declaration to the effect that they are owners of the land as described in the plaint to the extent of 1/3rd share and that mutation of succession of Mahan Singh son of Chanda Singh has been wrongly sanctioned in favour of defendant no.1-Gurdial Singh as well as a declaration that order dated 22.06.2007 passed by the District Collector, Moga, sanctioning the Fard Badar No. 3 on an application

of defendant-Gurdial Singh, is illegal, ineffective, null and void qua the rights of the plaintiffs. Further relief of permanent injunction for restraining defendants no.1, 3 and 15 from taking forcible possession of the land or interfering in their peaceful possession was sought. It is pleaded that the suit property was originally owned by the predecessor-in-interest of the plaintiffs, namely Chanda Singh and his father Sahib Singh. Chanda Singh had four sons namely Sawan Singh, Mahan Singh, Hazara Singh and Nikka Singh. Nikka Singh was unmarried and issueless and he adopted defendant no.1-Gurdial Singh s/o Mahan Singh during his childhood. Sawan Singh also died issueless. Gurdial Singh was reared by Nikka Singh as his son. Thereafter, a registered adoption deed was executed on 20.06.1946 by Nikka Singh, formally adopting Gurdial Singh. Mahan Singh was survived by his three sons namely Puran Singh, Sant Singh @ Sangat Singh and Gurdial Singh-defendant no.1. It is further pleaded that once Gurdial Singh was adopted by Nikka Singh, estate of Mahan Singh was to devolve only upon his two other sons namely Puran Singh and Sant Singh @ Sangat Singh. Defendant no.1-Gurdial Singh was thus wrongly projected as owner of 1/ 12 share out of 1/ 4th share of Mahan Singh. Plaintiffs are sons of Sant Singh @ Sangat Singh son of Mahan Singh. Sawan Singh died issueless. He was survived by his widow Mahan Kaur. When Mahan Kaur died, plaintiffs, it is pleaded inherited the estate of Sawan Singh through Mahan Kaur and their share increased to $1/4 + 1/12$ i.e., $1/3^{\text{rd}}$ share in the suit property. Nikka Singh sold 2 Kanal 2 Marlas of land vide sale deed dated 06.12.1960. Gurdial Singh sold 15 Kanal 15 Marlas of land to defendants no.11 to 13. Gurdial Singh further sold land measuring 22 Kanals 5 Marlas to Gurminder

Kaur (present appellant-defendant no.15) vide sale deed dated 03.01.2005. Plaintiff-Kuldip Singh moved an application for partition, which was sanctioned on 15.03.2002. On an application moved by defendant no.1-Gurdial Singh, Fard Badar No. 3 (correction in revenue records) was prepared and incorporated in the revenue record vide which legitimate share of the plaintiffs in the suit property was diminished. Defendants, it is submitted tried to interfere in the peaceful possession of the plaintiffs on the basis of the said Fard Badar. Accordingly, suit was filed.

Defendant nos.1, 2 and 15 (present appellant), filed joint written statement. Relationship between the parties was admitted. However, it was denied that the plaintiffs were entitled to the relief claimed for. It is stated that Nikka Singh had adopted Gurdial Singh in the year 1946, whereas Mahan Singh had died prior thereto. Therefore, Gurdial Singh was entitled to inherit the estate of Mahan Singh along with his other brothers. All the averments in the plaint were denied. Dismissal of the suit was prayed for.

Defendants no.11 to 13, filed a joint written statement and defend sale deed dated 24.05.1988 being a legal and valid instrument. Joint written statement was filed by defendants no.7 to 9, wherein they claimed ownership over 10 Kanals 9 Marlas of land pursuant to sale deed dated 26.04.1988 executed by Gurdial Singh.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for declaration as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the suit is not maintainable?OPD
4. Whether the suit is under valued?OPD

5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the suit of the plaintiff is time barred?OPD
7. Whether the suit is bad for misjoinder of necessary parties?OPD
8. Whether plaintiff has no cause of action to file the present suit?OPD
9. Relief.

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

Learned trial Court on considering the evidence on record, decreed the suit filed by the plaintiffs-respondents to the extent that the plaintiffs were held entitled to a declaration to the effect that they are owners of the suit property to the extent of 51 Kanals 14 Marlas i.e., 1/ 3rd share of the suit property and that mutation of succession of the estate of Mahan Singh in favour of defendant no.1-Gurdial Singh to the extent of 1/ 12 share was incorrectly reflected. Relief pertaining to the Fard Badar was rendered infructuous as it was already invalidated through order Ex.P-2. It was further directed that defendants no.1, 3 and 15 are permanently restrained from alienating the share of the plaintiffs in the suit property in any manner to any person.

Appeal preferred by the present appellant-Gurminder Kaur (defendant no.15) was also dismissed by the learned Additional District Judge, Moga, vide impugned judgement and decree dated 18.11.2017.

Aggrieved therefrom, present appeal has been filed by the appellant-Gurminder Kaur (defendant no.15).

Learned counsel for the appellant argues that adoption of Gurdial Singh by Mikka Singh took place after the death of Mahan Singh i.e., natural father of Gurdial Singh. Therefore, Gurdial Singh was entitled to

succeed to the property of Mahan Singh. Mahan Singh died in the year 1934 whereas the adoption deed, Ex.DX, was executed in the year 1946. Moreover, appellant in the present case is a bona fide purchaser of the property in question. Therefore, she is entitled to protect her share. It is thus prayed that present appeal be allowed and the suit filed by the plaintiffs-respondents be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

As per Ex.P-8 i.e., jamabandi for the year 1988-89 regarding the suit property, share of the plaintiffs along with defendant no.1-Gurdial Singh is clearly reflected in column no. 4 thereof. It is thereafter that Fard Badr no. 3 was entered in the revenue record as reflected in Ex.P-8 itself, vide which share of the plaintiffs in the suit property was reduced and that of defendant no.1 increased. Said Fard Badr was challenged by the plaintiffs before the revenue Court and vide order dated 05.08.2010, passed by the Commissioner, Ferozepur Division, Ferozepur, the said Fard Badr was set aside and share of the plaintiffs and defendant no.1 reverted to the position as prior to the incorporation in the Fard Badar no. 3.

It is also not in dispute that the property in question stood partitioned as reflected in order, Ex.P-20, against which an appeal was preferred and dismissed by the learned Collector, Moga, on 30.05.2003. Revision preferred against the said order by Gurdial Singh was dismissed by the Commissioner, Ferozepur Division, Ferozepur, vide order dated 05.08.2010 (Ex.P-1). It is pertinent to note, at this stage, that it is specifically observed in order dated 05.08.2010 passed by the Commissioner, Ferozepur

Division, Ferozepur, that Gurminder Kaur, present appellant, purchased the land from Gurdial Singh during the pendency of the proceedings. She was not permitted to be impleaded in the said proceedings, which it is informed, have attained finality.

Argument raised by learned counsel for the appellant that Gurdial Singh was adopted by Nikka Singh, after death of Mahan Singh and adoption deed was executed after the death of Mahan Singh on 22.05.1946, is of no avail to the appellant as it is not borne out from the record.

I have perused the adoption deed Ex.DX. It is specifically mentioned therein that Gurdial Singh was adopted by Nikka Singh, since his birth itself and Gurdial Singh was brought up by Nikka Singh. It is only to give a legal colour and complexion that adoption deed was formally executed subsequently. Therefore, it is rightly held by both the learned Courts below that Gurdial Singh had been adopted by Nikka Singh since birth much prior to the death of Mahan Singh and prior to execution of formal adoption deed, Ex.DX.

At this stage, it is gainful to refer to Ex.P-3 i.e., judgement dated 04.05.2005, passed by the learned Additional Civil Judge (Sr. Division), Zira, in a suit filed by Gurdial Singh seeking a declaration in relation to the suit property. Gurdial Singh sought declaration to the effect that he had become owner in possession of the suit property by way of adverse possession. Both the learned Courts below have correctly observed that in such a situation, Gurdial Singh himself admitted that he was not the owner of the suit property. This claim raised by defendant no.1-Gurdial Singh was rejected by the learned trial Court and his suit was dismissed vide

judgement and decree dated 04.05.2005.

Learned trial Court has rightly observed that DW-1-Gurminder Kaur (present appellant) has expressed her ignorance of fundamental aspects of the suit. Detailed reference is made to her testimony. It is to be noted that Gurminder Kaur filed a joint written statement with defendants no.1 and 2. Thus, it is correctly observed by the learned trial Court that Gurminder Kaur never had the qualification to raise a claim discordant to the one raised by defendant no.1-Gurdial Singh in concern with his inheritance rights.

As noted earlier, Gurminder Kaur had purchased part of the suit land from Gurdial Singh during the pendency of the proceedings between the parties. Therefore, principle of *lis pendens* necessarily applies.

No other argument has been raised.

Learned counsel for the appellant-defendant no.15, 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 returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record. I do not find any illegality, infirmity or perversity in the impugned judgements, which calls for any interference by this Court.

There is a delay of 224 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 27.04.2015 and 18.11.2017

passed by the learned Addl. Civil Judge (Sr. Division) Moga and learned Additional District Judge, Moga, respectively, are upheld.

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

07.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.