

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

RSA No.886 of 2018 (O&M)

Date of decision: 05.12.2019

Gurbax Kaur and others

.....Appellants

Versus

Baldev Mitter

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Bhanu Pratrap Singh, Advocate,
for the appellants.

Mr. R.K. Chauhan, Advocate,
for the respondent.

Ritu Bahri, J.

CM No.2177-C of 2018

For the reasons mentioned in the application, same is allowed and
delay of 88 days in re-filing of the appeal is condoned.

RSA No.886 of 2018 (O&M)

This appeal has been filed against the judgment dated 02.12.2016
passed by the Additional District Judge, Hoshiarpur, dismissing an appeal
filed by defendant-appellants (hereinafter referred to as 'the defendants')
against the judgment and decree dated 23.09.2015 passed by the Civil Judge
(Junior Division), Hoshiarpur, whereby suit filed by plaintiff-respondent
(hereinafter referred to as 'the plaintiff') for declaration, has been decreed.

Baldev Mitter-plaintiff (respondent herein) filed the above said
suit with the averments that he and other persons are joint owners of the suit
land, fully detailed and described in the head note of the plaint, and are in
exclusive possession of the same. Sh. Kuldep Singh, predecessor-in-interest
of the defendants, got executed a sale deed dated 14.09.2001 from one

performance. The aforesaid sale deed was executed by a Local Commissioner appointed by the Court. Sh. Vikas Chander was not exclusive owner of the entire suit property and the agreement to sell entered into by him and the consequent sale deed did not convey any title to Sh. Kuldeep Singh. The present plaintiff filed a suit against Sh. Kuldeep Singh for declaration to the effect that the sale deed in his favour did not convey him any title. The said suit was decided by the Court of Sh. Kewal Krishan, Civil Judge (Junior Division), Hoshiarpur vide judgment dated 12.08.2005 by holding that Vikas Chander, who sold the property in dispute to Sh. Kuldeep Singh was not exclusive owner of the suit property. It was further held that the suit property was in possession of the plaintiff and 03 other persons as joint owners. Kuldeep Singh was not in possession of the suit property and he was only a co-owner. The suit of the present plaintiff was dismissed on the ground that no injunction could be granted against a co-owner. Against the said judgment, plaintiff filed an appeal, which was decided by the Court of Ms. Manju Rana, Addl. District Judge, Hoshiarpur, vide judgment dated 13.06.2008 by holding that Kuldeep Singh was only a co-owner and he could only seek partition of this land and had no right to forcibly dispossess the plaintiff from the suit property. Kuldeep Singh had died during the pendency of the appeal and the present defendants were contesting the same being his LRs. Since then, the defendants kept mum and the plaintiff has been peacefully enjoying the suit property. Now, the defendants have got mutation of their sale deed sanctioned on 11.06.2010 at the back of the plaintiff and other co-owners and by virtue of this mutation, they have been shown as exclusive owners of the entire suit property. As per plaintiff, the said mutation was illegal and liable to be ignored qua

his rights in the suit property. The above mutation has also been entered in the jamabandi for the year 2011-12 and name of Sh. Kuldeep Singh, deceased, predecessor-in-interest of the defendants, has been entered as owner and in possession of the suit property. Hence, the suit.

Upon notice, defendant Nos. 1, 2 and 4 filed written statement taking preliminary objections with regard to maintainability, *res judicata* and concealment of facts from the Court. It was submitted that the plaintiff and other persons have no concern with the suit property. The mutation was entered on the basis of sale deed dated 14.09.2001 in favour of Kuldeep Singh, which was got executed by the Local Commissioner pursuant to the judgment dated 18.09.1998 passed by Sh. R.M. Gupta, District Judge, Hoshiarpur. The said judgment has attained finality. It was further stated that the plaintiff being a party had appeared in that suit, but did not contest the same. Bhajan Singh-defendant No.4, in that suit, had contested the suit, which was filed by Kuldeep Singh. Agreement to sell dated 26.06.1989 was in respect to the whole area of Khasra No.19//9/1/3 (2-6), 21 (7-0) and the present plaintiff did not contest the suit. The possession was delivered to Kuldeep Singh at the time of agreement to sell. Kuldeep Singh-decree holder had submitted a draft sale deed containing entire khasra numbers of land measuring 83 Kanals 08 Marlas, including the disputed khasra number. Thereafter, the present plaintiff had filed objections stating that the agreement to sell had been related to the dispute khasra numbers only, so the other khasra numbers could not be mentioned in the draft sale deed. Then, another draft sale deed was prepared specifying the disputed khasra numbers. Thereafter, the present plaintiff raised objections not to implement the same in the revenue record. The executing court passed an order to implement the decree on the basis of sale deed, in the revenue record and the non compliance had to be taken as violation. In the judgment dated 18.09.1998, there is finding of the District Judge, Hoshiarpur regarding exclusive possession of the decree holder. Earlier, the plaintiff had challenged the sale deed

dated 14.09.2001, but he could not succeed. Mutation No. 3261 was sanctioned on the basis of sale deed dated 14.09.2001. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether suit is not maintainable in the present form? OPD
4. Whether judgment passed in previous suit, decided by the Court of Sh. Kewal Krishan, Ld. Civil Judge (Jr. Div.), Hoshiarpur dated 12.08.2005 operates as resjudicata upon the present suit? OPD
5. Whether Som Nath is minor and as such, suit is liable to be dismissed on the ground that it has been filed without the appointment of his guardian? OPD
6. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Heard. Both the Courts below, after going through the judgments dated 12.08.2005 and 13.06.2008 Ex.P2 and Ex.P3 passed by Sh. Kewal Krishan, Civil Judge (Junior Division) and Ms. Manju Rana, Addl. District Judge, Hoshiarpur, held that Vikas Chander Vasudeva was co-sharer to the extent of 592/3336 share in the total joint holding, of which, the property in dispute was part and parcel. The lower appellate Court had also observed that sale of specific khasra numbers of the joint holding would be considered as sale of shares out of total joint property and even if, sale deed had been executed with regard to specific khasra number, the said sale deed in favour of predecessor-in-interest of defendants would be considered as sale of share out of total joint land. Hence, Kuldeep Singh and his successors-in-interest would only become co-sharers along with other co-

owners. After purchasing the land from Vikas Chander, Kuldeep Singh had stepped into the shoes of his vendor. He could not claim ownership of any specific khasra numbers. Ex.P4 was the Jamabandi for the year 2011-2012. Plaintiff has challenged the entry in Ex.P4, whereby Kuldeep Singh had been shown to be exclusive owner in possession of the land measuring 9 Kanals 6 Marlas, which was falling in Khasra No.19//19/1/3, 19//21.

Keeping in view that Kuldeep Singh had stepped into the shoes of his vendor namely Vikas Chander, he had become co-sharer in the entire joint holding. Hence, sanctioning of mutation No.3261 showing Kuldeep Singh as exclusive owner in possession of specific khasra numbers, was not legally sustainable. Keeping in view the above fact, suit of the plaintiff has been decreed by both the Courts below.

In view of the above discussion, this Court is of the view that defendant-appellants have failed to lead any cogent and convincing evidence to prove their case that Kuldeep Singh was exclusive owner in possession of any specific khasra number. In this backdrop, suit filed by the plaintiff (respondent) has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

05.12.2019
ajp

(RITU BAHRI)
JUDGE

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