

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

CR No..741 of 2020 (O&M)
Date of Decision: 12.2.2020

Harwinder Singh and others ... Petitioners

Versus

Walait Singh deceased through L.Rs & Anr. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Naresh Kumar Manchanda, Advocate
for the petitioners

RAJIV NARAIN RAINA, J.

1. Presented under Article 227 of the Constitution this petition is directed against the order dated 17.12.2019 passed by the learned Additional District Judge, Faridkot dismissing the application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 while maintaining the order of the learned Civil Judge (Jr.Div.), Faridkot passed on 12.9.2018 declining temporary injunction to the plaintiffs and refusing to restrain the defendants from alienating or transferring a parcel of agricultural land admeasuring 56 Kanals 12 Marlas situated at Village Dhilwan Kalan-I, Tehsil Kotkapura, District Faridkot, to anybody in any manner by way of sale, mortgage, gift exchange, transfer deed etc. till the decision of the suit.

2. The plaintiffs are the petitioners in this petition claiming rights in the suit property on the basis of an entry in the Jamabandi for the year 1957-58 in which revenue paper Koer Singh and Walait Singh are shown as two different persons, both sons of Ghumand Singh. It is pleaded that Koer Singh died bachelor and left no issue and the

defendants taking advantage of this fact, Walait Singh, defendant no.1 in connivance with the revenue authorities got his name recorded in the Jamanbandi as “Koer Singh *urf* Walait Singh” instead of Koer Singh and Waliat Singh, as was the position obtaining in the Jamabandi for the years 1957-58.

3. It is further pleaded in the suit for declaration that Walait Singh and Koer Singh were brothers, both sons of Ghumand Singh and the Jamabandi for the year 1957-58 supports this fact.

4. In their suit the plaintiffs have challenged the entry of ownership in the subsequent Jamabandi for the year 1962-63 where the word “Urf” (alias) has been interpolated by forgery between the names of Walait Singh and Koer Singh which makes them one and the same person. It is not a disputed fact that in the subsequent Jamabandis, the entry continued to read “Walait Singh Urf Koer Singh”. The plaintiffs claim rights coming from late Koer Singh. This means that the plaintiffs seek reversionary rights from Koer Singh over the share of the property since he died unmarried leaving no child to claim the property by inheritance and succession.

5. In neither of the two judgments of the courts below have reversionary rights been mentioned, but it means as much. To determine the allegation of forgery in the Jamabandi for the year 1961-62 is within the realm of the trial court required to go by evidence adduced by the parties, and, therefore, no comment is made in this regard since the question here in is whether a temporary injunction should have been issued in favour of the plaintiffs and against the defendants.

6. The application for temporary injunction was resisted by the defendants in the trial court while contending that there is no

reasonable explanation as to why the plaintiffs remained silent for almost 50 years to challenge any discrepancy in the Jamabandi. The learned trial court observed that it is settled principle of law that a presumption of truth attaches to entries in the Jamabandi running since the year 1961-62, till the filing of the suit where property has been shown to belong to Koer Singh alias Walait Singh. The defendants have relied on an agreement to sell dated 15.12.2003 entered between defedant no.1 Koer Singh alias Walait Singh and plaintiff no.4 Jaswinder Singh son of Lachhman Singh in which he agreed to purchase land measuring 12 Kanals out of the suit land from Walait Singh. In the sale agreement, Koer Singh alias Walait Singh has been mentioned as owner in possession.

7. The trial court drew a reasonable inference from this fact that if the plea of the plaintiff is true then why would he agree to buy any land from suit property in which the name of defendant no.1 is shown as Koer Singh @ Walait Singh. The trial court has rightly not formed any final opinion at an interim stage as all this is a matter of evidence and it is for the plaintiffs to discharge the burden of proof. It was for these two reasons that the application has been dismissed by the trial court on 12.9.2018 as it found neither a prima facie case nor the balance of convenience in favour of the plaintiffs at this stage.

8. The lower appellate court has considered the entire issue and has passed a detailed order traversing the limited issue as to whether the trial court was correct in refusing to issue temporary injunction. He has accepted the view of the trial court on both the points. The first appellate court has looked into some of the other aspects including the death register maintained by the Pandits of

Haridwar and the affidavit of the Pandit to prove that Koer Singh is a separate person and brother of Walait Singh.

9. The plaintiffs argued that the trial court has not looked into this document produced on record by them. Whether the two are one and the same person or not is a matter of evidence and can only be decided after evidence from both the parties is collected and no opinion can be expressed at this stage and in the due course the legal effect entries in the register at Haridwar will surely be considered while passing final judgment in the judicial discretion of the trial court weighed with other evidence as alone it may not stand.

10. However, a temporary injunction will not issue against the recorded owner of the property in the jamabandis existing for over half a century without challenge except on presentation and acceptance of unimpeachable evidence or the probabilities in support of the entry in the Jamabandi for the year 1957-58, which the plaintiffs are free to lead in their evidence to establish their rights in property, if any.

11. But at this stage, it cannot be said that there is any illegality or impropriety in the impugned orders passed by the successive courts declining the interim relief sought by the plaintiffs. Hence, no interference with the impugned orders is warranted at this stage.

12. In view of the above, this petition is dismissed in limine.

12 .2.2020
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No