

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

115

RSA-2792-2019 (O&M)

Date of decision: 17.02.2020

NEELAM KAUR AND ORS

... Appellants

Versus

GURDEV RAM

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. SP Soi, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession of plot/taur measuring 8 marlas shown in red colour in plan attached, detailed in headnote of the plaint, situated in abadi of village Malari, Tehsil Nakodar, District Jalandhar was decreed by the trial Court vide decree and judgment dated 18.04.2017 that came to be affirmed in appeal by the Additional District Judge, Jalandhar vide decree dated 01.04.2019.

Counsel for the appellants has assailed impugned judgments primarily on two counts. It is argued that boundaries of 8 marlas of land purchased by Mr. Kamal Kishore vide sale deed dated 24.04.1998 and purchase of said land by the respondent/plaintiff from said Kamal Kishore vide sale deed dated 02.12.2005 do not tally with the boundaries given in headnote of the plaint and site plan relied upon by the respondent, as has been so admitted by respondent/plaintiff in his cross examination.

Another submission made by counsel is that land measuring 1 kanal 4 marlas was owned by Sh. Naranjan Singh and after death of Naranjan Singh, the same was inherited by Gurbachan Kaur widow, Avtar Singh son, Surjit Kaur and Narinder Kaur, daughters to the extent of 1/4th share each. After death of Avtar Singh, his 1/4th share was inherited by appellants along with Sarabjit Kaur to the extent of 1/20 share each. It is argued that as other co-owners of land measuring 1 kanal 4 marlas have not been impleaded as a party, the suit is liable to be dismissed on this score alone.

I have heard counsel for the appellants, perused the paper book and records.

As per sale deed dated 24.04.1998 executed in favour of Kamal Kishore, Neelam Kaur and Balwinder Kaur sold land measuring 8 marlas with specific boundaries for consideration of Rs.70,000/-. Chamkaur Singh and Rajwinder Kaur, defendants No.2 and 4 filed suit on 01.10.2005 to challenge sale deed dated 24.04.1998, dismissed as withdrawn on the basis of compromise. The respondent/plaintiff filed Civil Suit No.46 of 2006 on 11.02.2006 for grant of permanent injunction restraining the appellants from interfering in peaceful and lawful possession of the respondent over the suit property and the same was also dismissed as withdrawn on the basis of compromise arrived at between the parties. The boundaries described in the suit for permanent injunction exactly tally with the boundaries given in the instant suit. As per the compromise Ex.C1 in the said suit and marked as Ex.P6 in the present case, appellant Neelam Kaur accepted correctness of the boundaries given in the said suit. That being so, it does not lie in the mouth of the appellants now to contend that since the boundaries of the suit property do not tally with the sale deed executed in favour of the respondent/plaintiff, he is not entitled to seek possession of the property in question.

So far as plea of the appellants that the suit is bad for non-joinder of necessary parties i.e. other co-owners of land measuring 1 kanal 4 marlas, the sale deed executed by Neelam Kaur and Balwinder Kaur in favour of Mr. Kamal Kishore is in respect of 8 marlas to the extent of 1/3rd share out of total land measuring 1 kanal 4 marlas. Till date, the other alleged co-owners have not challenged the sale deed dated 24.04.1998 in favour of Kamal Kishore and sale deed dated 02.12.2005 in favour of the respondent/plaintiff. It is the specific plea of the respondent/plaintiff that subsequent to decision of the suit for injunction, the appellants have forcibly occupied 8 marlas of land that belongs to him on the basis of sale deed in regard whereof the suit for injunction was filed by him, disposed of on the basis of compromise. In the given circumstances, the appellants cannot be allowed to retain possession of the suit property on the pretext that other co-owners have not been joined as a party. It is never the plea of

the appellants or respondent that any other alleged co-owner was ever in possession of the disputed land measuring 8 marlas. This apart, the alleged co-owners, even if they have any right in any part of land measuring 1 kanal 4 marlas would be entitle to recover possession from the person in possession after seeking partition of the joint land. In this view of the matter, both the contentions raised by appellants are patently misconceived and merits out-right rejection.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

17.02.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No