

S. No.304

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

Date of Decision:06.12.2022

1. RSA No.303 of 1991 (O&M)

Kaka Singh and othersAppellants

Vs.

Gurdial Singh and othersRespondents

2. RSA No.493 of 1991 (O&M)

Chhotta Singh and anotherAppellants

Vs.

Gurdial Singh and othersRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashish Gupta, Advocate for the appellants.

Mr. Sunny Kumar Singla, Advocate for the respondents.

DEEPAK GUPTA, J.

This judgment shall dispose of two appeals, i.e. RSA No.303 of 1991; and RSA No.493 of 1991, as both of them have been filed against the same judgment & decree passed by the Courts below.

2. Lower Court record was called. Same has been perused. To avoid confusion, the parties shall be referred as per their status before the Courts below.

3. Defendant- Harnam Singh (since dead) and his brother Wariam Singh entered into an agreement (Ex.P1) to sell 6 bigha 2 biswa of their land comprised in Khasra No.1216-1217/2, 2539/1206, 2556/1216/1, 1216/2 and 1181/3 @ ₹3800/- per bigha on 17.12.1978 to plaintiff- Gurdial Singh. They received ₹13,000/- as earnest money and undertook to execute the sale deed by 15.06.1979. Wariam Singh performed his part of the agreement by executing sale deed dated 12.06.1979 in respect of 3 bigha of land

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representing his $\frac{1}{2}$ share in the land comprised in khasra No.1217/1216/2 (1-9), 2539/1206 (2-10), 2556/1216/1 (1-4) & 1216/2 (0-17) besides his $\frac{1}{8}$ th share i.e. One biswa in the land comprised in khasra No.1181/3 (0-8) in favour of son of the plaintiff – Gurdial Singh at his instance. In the meantime, Smt. Bhagwant Kaur wife of defendant - Harnam Singh instituted a suit against her husband on 31.05.1979 seeking maintenance and by creating a charge on the suit property. She was able to obtain an order of temporary injunction. Due to this, defendant- Harnam executed fresh agreement to sell dated 13.06.1979 (Ex.P2) in favour of plaintiff Kaka Singh son of plaintiff- Gurdial Singh in continuation of the previous agreement, undertaking to execute the sale deed within 15 days of the vacation of the stay order. Although the suit filed by Smt. Bhagwant Kaur was dismissed on 13.02.1981 but still defendant showed his inability to execute the sale deed qua his half share in the suit land forming subject-matter of the agreement to sell by telling that his sons had instituted a suit and had obtained a decree to the effect that he (defendant) was owner to the extent of $\frac{1}{6}$ th share only in the land measuring 58 bigha 3 biswa, which decree remained intact upto the Appellate Court. As defendant did not execute the sale deed as per the agreements despite readiness and willingness of the plaintiffs, suit for possession by way of specific performance was filed.

4. Defendant in his written statement denied the correctness of the material averments. He pleaded that his own share in the suit property was fluctuating, as it was a joint Hindu family property and so, there was no case for specific performance.

5. Learned trial Court framed the following issues:-

“1. Whether the defendant and his brother Waryam Singh executed an agreement to sell dated 17.12.1978 and received Rs.13,000/- as earnest money? O.P.P.

2. Whether the defendant executed supplementary agreement to sell dated 13.6.1978? If so, its effect? O.P.P.

3. Whether the plaintiff has remained and is still ready and willing to perform his part of the contract? O.P.P.

4. Whether the plaintiff is entitled to claim damages? If so, to what extent? O.P.P.

5. Whether the suit property is joint Hindu family and Coparcenary property? If so, its effect? O.P.D.

6. Relief.”

6. After taking evidence produced by the parties and hearing both the sides, learned trial Court decided Issues No.1 to 3 in favour of the plaintiffs and issue No.5 against the defendant. It was held while discussing these issues that as per judgment Ex.P8 & decree Ex.P9 dated 29.7.1982 in suit titled ‘Chhota Singh & Others vs. Harnam & Others’, defendant Harnam had 1/3 share in total land measuring 58 bigha 12 biswa. Under Issue No.4, plaintiff was held entitled to damages to the extent of ₹ 4,940/- for non-performance by defendant. Pursuant to these findings, suit for specific performance of agreement to sell dated 17.12.1978 and 13.06.1979 was decreed. Defendant was directed to execute sale deed in respect of 3 bigha 1 biswa of land out of his 1/3rd share of the land as mentioned in the decree-sheet Ex.P.9. Plaintiffs were also directed to

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deposit remaining sale consideration.

7. The aggrieved plaintiffs filed appeal, pleading that though suit for specific performance had been correctly decreed but the judgment of the trial Court was liable to be modified insofar as suit was decreed with respect to land of 3 bigha 1 biswa out of 1/3rd share of the land mentioned in the decree-sheet Ex.P.9 instead of decreeing with respect to the land as mentioned in the agreements to sell dated 17.12.1978 and 13.06.1979.

8. During pendency of the first appeal, defendant- Harnam Singh died. His legal representatives, namely, Kaka Singh, Mehar Singh, Hardial Singh, Chhota Singh and Randhir Singh (5 sons) were brought on record. Learned First Appellate Court accepted the appeal filed by the plaintiffs and decreed the suit for possession by way of specific performance with respect to the suit property, with the direction to the respondents (LRs of the deceased- defendant), to execute the sale deed in terms of agreements dated 17.12.1978 and 13.06.1979, failing which plaintiffs were given liberty to get the same executed through the Court. However, it was made clear that transferees will get the rights of transferor to the joint possession only and may enforce partition, if so desired after sale deed is executed in their favour.

9. Against the above-said judgment and decree dated 07.09.1990 passed by the First Appellate Court, two of the LRs, namely, Chhota Singh and Randhir Singh filed RSA No.493 of 1991; whereas, three other LRs, namely, Kaka Singh, Mehar Singh and Hardial Singh filed RSA No.303 of 1991.

10. It is contended RSA No.303 of 1991 by the appellants Kaka

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Singh and others that Harnam Singh was only co-sharer in the land in dispute and did not have any specific claim with respect to any specific khasra number and, therefore, First Appellate Court exceeded its jurisdiction by giving the finding that plaintiff was entitled to specific performance of agreement to sell with respect to the specific khasra number in land in dispute. Besides, the finding of the First Appellate Court that transferees will get the joint possession only and may enforce partition, if so desired after the sale deed is executed in their favour, is self contradictory. Prayer is made to set aside the decree passed by the First Appellate Court and to restore the decree as passed by the trial Court.

11. In RSA No.493 of 1991, it is contended by the appellants Chhota Singh & Randhir Singh that in an earlier litigation, their application under Order 1 Rule 10 CPC to implead them as a party was dismissed. Civil Revision filed by them was dismissed by the High Court and, therefore, in the present litigation, after the death of defendant- Harnam Singh, they (appellants) should not have been impleaded as a party, as it amounts to re-opening of the orders passed on the application under Order 1 Rule 10 CPC of the earlier litigation. These appellants further submit that alleged agreements to sell were regarding specific share of the land in dispute and so, no such decree could have been passed by the First Appellate Court, which is self contradictory. Besides, Harnam Singh did not have any legal necessity to enter into an agreement regarding the suit property, which was co-parcenary in nature. These appellants prayed for setting aside the decrees as passed by both the Courts below.

12. The respondents of both the appeals – plaintiffs contested the

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appeals and supported the reasoning of the first appellate court.

13. I have considered submissions of both the sides and have appraised the record .

14. The suit land agreed to be sold by defendant Harnam and his brother Waryam by way of agreement dated 17.12.1978 (Ex.P1) read with agreement dated 13.06.1979 (Ex.P2) is comprised in khasra nos. 1217/1216/2 (1-9), 2539/1206 (2-10), 2556/1216/1 (1-4), & 1216/2 (0-17) besides two biswa in the land comprised in khasra No.1181/3 (0-8). Jamabandi for the year 1975-76 (Ex.D4) reveals that suit land measuring 6 bigha 2 biswa, which was agreed to be sold by defendant Harnam Singh along with his brother Wariam Singh, is part of 58 bigha 12 biswa of land. Both the brothers Harnam Singh and Wariam Singh are recorded to be joint owner in possession of this entire land measuring 58 bigha 12 biswa, which includes the suit land. Specific khasra numbers were agreed to be sold by both the brothers to the plaintiff Gurdial. Since the two brothers were in exclusive possession of the land agreed to be sold, so obviously they were in position to deliver possession thereof to the vendee- plaintiff. It is not disputed that Wariam Singh, brother of defendant, performed his part of agreement by executing sale deed dated 12.06.1979. It is the defendant Harnam, who faulted by initially taking the plea that the stay order had been obtained by his wife and when that suit for maintenance filed by his wife was dismissed, then taking a plea that his sons had filed a suit on the ground that property in dispute was co-parcenary.

15. In Suit No.112 of 1981 titled 'Chhota and another Vs. Harnam Singh and others' decided vide judgment dated 29.07.1982 (Ex.P8) and

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decree Ex.P9, Harnam Singh had been held to be owner of 1/12th share in the entire land except khasra No.1181/3, in which his share was found to be 1/24th.

16. The contention raised in these appeals by the defendant Harnam Singh through his LRs (five sons) is that specific performance could have been ordered only qua the share of Harnam to the extent of 3 bigha 1 biswa in the entire land and not his share of 3 bigha 1 biswa in the specific numbers as mentioned in the agreements.

17. Contention is devoid of any merit. Rights and liabilities inter-se the co-sharers have been discussed at length by a Division Bench of this High Court in **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528** and, thereafter, this authority was affirmed by a Full Bench of this High Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204,** wherein the rights and liabilities of the joint owners were explained as under:-

- (1) Property held in common, by two or more persons, whatever be its nature of origin, is said to be joint property and the owners thereof joint owners.
- (2) This body of owners is joint, both in possession and in ownership of the property and every co-sharer shall be owner in possession of every inch of the joint estate.
- (3) A co-sharers/ joint owners are in separate possession of different parcels of land and as a natural consequence, a co-sharer in possession of a specific area of joint property possesses the property for and on behalf of all other co-

sharers/ joint owners.

- (4) A joint owner, therefore, would be owner of a specified share in the entire joint property but would not be entitled to claim separate ownership of any specified and particular portion of the joint property till such time, as the property remains joint.
- (5) A joint owner/ co-owner, just as an individual owner, has an inherent right to alienate the joint property, limited to the extent and the nature of his share holding. Upon transfer of his share or a part thereof, a co-sharer transfers only such rights as vest in him as a joint owner.
- (6) A vendee from such a joint owner or a co-sharer would, therefore, receive the property so transferred, with all the rights and liabilities that vested in his vendor, namely, a right to assert a community of interest (ownership) and a commonality of possession in the entire joint estate and along with the entire body of joint-co-owners.”

18. The above-said view has been re-affirmed by another Full Bench of this Court in **Ram Chander Vs. Bhim Singh and others, Law Finder Doc Id #144507**, wherein apart from the principles laid down in **Bhartu Ram's case (supra)**, it was further clarified that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without however asserting exclusive ownership to

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the portion so transferred and possessed, till such time as the joint estate is not partitioned.

19. In the present case, defendant Harnam Singh having agreed to sell his share to the extent of 3 bigha 1 biswa in specific numbers mentioned in the agreement to sell, in which he was in his possession along with his brother Wariam Singh; and Wariam Singh having already executed the sale deed in favour of the plaintiffs, so learned First Appellate Court did not commit any error by directing to execute the sale deed in favour of plaintiffs in respect of the specific khasra numbers as mentioned in the agreements. The learned First Appellate Court has also rightly clarified that the transferees i.e. plaintiffs will get the rights of the transferor to joint possession only and that they may enforce partition, if they so desire after execution of the sale deed in their favour. There is no ambiguity in the judgment passed by the learned First Appellate Court, as is contended by the appellants.

20. The contention of the appellants of RSA No.493 of 1991 to the effect that they were wrongly impleaded as LR's of defendant Harnam during pendency of the first appeal before the learned Additional District Judge, as an application under Order 1 Rule 10 CPC in an earlier litigation had been dismissed, has absolutely no merit. As is evident from the grounds of appeal itself, the application under Order 1 rule 10 CPC had been moved by the appellants to implead them in their personal capacity, whereas they have been brought on record as LR's of the deceased defendant Harnam Singh in the present litigation under Order 22 Rule 4 CPC and so, their capacity as such is different.

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21. No other point was urged.
22. In view of the aforesaid discussion, it is held that there is no merit in any of the appeals. Both the appeals are dismissed with costs. The judgment and decree as passed by the First Appellate Court is hereby affirmed.

December 6, 2022	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No