

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1595 of 2010 (O&M)

Date of decision : December 9th, 2022

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Jagir Singh

.....Appellant

vs.

Tarsem Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Deepak Verma, Advocate for the appellant.

Mr. Vipin Mahajan, Advocate for respondents No. 1 to 5, 7
and 8.

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H. S. Madaan, J.

1. Briefly stated, facts of the case are that, plaintiff – Karnail Singh s/o Jowand Singh, r/o village Kot Todar Mal, Tehsil Gurdaspur, had brought a suit against his real nephews – Balbir Singh and Jagir Singh (defendants), sons of Jarnail Singh, residents of his village, seeking a decree for permanent injunction, restraining the defendants from illegally and forcibly dispossessing the plaintiff from the suit land measuring 7 Kanals 11 Marlas, situated at village Kot Todar Mal, H.B. No. 527, Tehsil Gurdaspur.

2. As per case of the plaintiff, he is a co-sharer in exclusive cultivating possession of the suit land. The defendants being head strong persons, were threatening to dispossess the plaintiff from the said chunk of land, forcibly and illegally, not listening to the requests of the plaintiff to desist from doing so, giving rise to a cause of action to heirs to bring the suit in question.

3. On notice, only defendant No. 2 put in appearance and filed written statement contesting the suit, raising various legal objections, to wit that the suit was not maintainable; that the suit was barred by the principle of res judicata etc. On merits, the answering defendant contended that the plaintiff is not in exclusive possession of the suit land, though plaintiff and defendants being co-sharers in the joint land, stood admitted. Counter allegations were levelled by defendant No.2 contending that it is the plaintiff who is threatening to dispossess defendant No.2 from the suit land. Refuting the other assertions, such defendant prayed for dismissal of the suit.

4. It may be mentioned here that defendant No.1 had refused to accept the service of summons, as such was proceeded against ex parte

5. From the pleadings of the parties, following issues were framed :-

1. Whether the suit is barred by the principle of res judicata ?

OPD

2. Whether the plaintiff is entitled to relief of permanent

injunction as prayed for ? OPP

3. Relief.

6. Parties were given adequate opportunities to lead evidence in support of their respective claims.

7. After hearing the arguments, the trial Court decided issue No. 1 against the defendants and in favour of the plaintiff. Issue No. 2 was decided, in favour of the plaintiff and against the defendants. As a result of the findings on the issues, the suit of the plaintiff was decreed and a decree for permanent injunction, restraining the defendants from dispossessing the plaintiff from the suit land forcibly and illegally, was passed in his favour by the trial Court of Civil Judge (Junior Division), Gurdaspur, vide judgment and decree dated 22.10.2003.

8. Feeling aggrieved by the judgment and decree passed by the trial Court, defendant No.2- Jagir Singh, had knocked at the door of Learned District Judge, Gurdaspur, by way of filing an appeal, which was assigned to Additional District Judge, Gurdaspur. However, that appeal was dismissed with costs, vide judgment dated 5.10.2009.

9. Still feeling dissatisfied, defendant – Jagir Singh has approached this Court, by way of filing Regular Second Appeal, notice of which was given to the respondents.

10. It may be mentioned here that in the meanwhile, Karnail Singh – plaintiff had expired and his legal representatives were brought on record.

11. I have heard learned counsel for the parties, besides going through the record.

12. Permanent / perpetual injunction, dealt with by Section 38 of the Specific Relief Act, 1963, is a discretionary equitable relief, which is to be granted by the Court, keeping in view all the facts and circumstances, including conduct of the parties and no person can claim this relief as a matter of right.

13. Here, in this case, the plaintiff in the plaint had taken up a plea that he is in exclusive possession of the suit land in his capacity as a co-sharer and defendants being head strong persons were threatening to dispossess him there from. It is nowhere his case that he that he alongwith defendants are co-sharers in the joint land. Name of Jarnail Singh, father of defendants, who is none else, but a real brother of plaintiff, is also reflected in the ownership column. Names of various other persons are there in the ownership column of Jamabandi for the year 2002-2003 Exhibit R-1. The total area of joint holding is shown to be 111 Kanals 19 Marlas, of which the suit land is just a part. It is not case of the plaintiff that he is in exclusive possession of the suit land under an arrangement consented to by the other co-sharers, as such he is entitled to retain the possession till partition.

14. During the proceedings of appeal before learned Additional District Judge, Gurdaspur, appellant Jagir Singh had filed an application under Order 41 Rule 27 CPC, for permission to lead additional evidence, which has been allowed, since it was not

opposed by counsel for the respondent. Resultantly, counsel for the appellant, tendered into evidence certified copy of sale deed dated 26.3.1996 as Exhibit A-1; copy of mutation No. 3302 as Exhibit A-2; certified copy of sale deed dated 16.2.1993 as Exhibit A-3; copy of mutation No. 3286 as Exhibit A-4; certified copy of sale deed dated 7.11.2001 as Exhibit A-5; copy of mutation No. 3551 as Exhibit A-6 and closed his evidence. Through sale deed Exhibit A-1, plaintiff Karnail Singh is shown to have sold 46 Kanals 7 Marlas of his share in the joint khata to vendees Suba Singh, Surinder Singh, Rulda Singh, Gurdev Singh, Chanan Singh etc. for Rs.4,50,000/-, handing over possession to them. That sale deed is dated 26.3.1996. Vide sale deed Exhibit A-3, Karnail Singh is shown to have sold 0 Kanal 15 Marlas of land to Sadhu Singh etc. That sale deed is dated 16.2.1993 and in terms of sale deed Exhibit A-5 dated 7.11.2001, he had sold of 6 Kanals of land to Surinder Singh, Rulda Singh etc. As a result of these sale deeds, when plaintiff had sold his entire share in the joint holding, he was not left with any right or title in the land in question and he could not have possibly filed the suit for permanent injunction in that respect later on, on the strength of entries in the jamabandi.

15. It is to be kept in view that jamabandi is not a document of title, rather it is record of rights, which is mainly prepared for fiscal purposes to determine the amount of land revenue leviable on parcels of land and fixing the liability to pay the same. On the other hand, sale deed is a document of title. It is duty of the revenue

authorities to update the revenue record and keep it in accordance with the actual position at the spot. If for any reason any lapse takes place in updating the record, then no person can take advantage of that lapse. Here the plaintiff seems to be doing so. He without uttering a single word with regard to the sale deeds executed by him, had brought the suit for permanent injunction. Therefore, he is shown to be guilty of concealment of material facts, which clearly dis-entitles him to grant of perpetual injunction in view of Section 41 of the Specific Relief Act, 1963, which provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to dis-entitle him to the assistance of the court.

16. Although, the appellant - defendant had come up with a claim that in an oral family partition done between father of the appellant and respondents, the suit land had fallen to the share of father of defendants, but even if no such family partition could be proved, the plaintiff was required to prove his own case. That sale deeds executed by him having been brought on record, the plaintiff was not left with any right or interest in the suit land and he could not possibly file a suit for grant of permanent injunction against the respondents.

17. Both the courts by mis-appraisal of evidence and factual position and wrong interpretation of law, had come to the conclusion that plaintiff was in exclusive possession of the suit land and he was entitled to grant of permanent injunction. Whereas plaintiff did not deserve to be granted any such relief. The judgments and decrees

passed by the courts below are not sustainable and are set aside.
Resultantly, the suit of the plaintiff is dismissed with costs,
throughout.

18. The appeal is, accordingly, allowed.

December 9th, 2022	(H.S. Madaan)
chugh	Judge
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No