

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

RSA No.5936 of 2018 (O&M)

Reserved on 17.08.2022

Date of Decision : 23.08.2022

Ajit Singh & Ors.

.....Appellants

Versus

Paramjit Kaur & Ors.

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K. Chaudhary, Advocate for the appellants.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellants against the judgements and decrees of both the Courts below whereby the suit of the plaintiff-respondents for joint possession has been decreed.

The plaintiff-respondents filed a suit for joint possession of land in dispute averring that the land in dispute was originally owned by Kishan Singh son of Kesar Singh son of Jawahar Singh who died intestate in January 1989 leaving behind his sons, namely, Gian Singh, Ajit Singh, Bawa Singh and Preeta. Preeta is unheard for the last more than 7 years along with his three daughters. The land in dispute being ancestral property had to be inherited in four equal shares but defendant Nos.1 to 3 in connivance with the Revenue Officials and the *Numberdar* had made a wrong pedigree table and deleted the name of the father of the plaintiff-respondents, Gian Singh, and Preeta from the pedigree table and got the mutation done in the names of defendant No.1 and Bawa Singh who was the father of defendant Nos.2 and 3.

In their written statement the defendant-appellants raised

preliminary objections regarding the suit being time-barred, not maintainable and bad for non-joinder of necessary parties, concealment of facts, lack of *locus standi* to the plaintiff-respondents. On merits it was submitted that Kishan Singh had died intestate leaving behind five sons : Gian Singh, Ajit Singh, Bawa Singh, Preeta and Dalip Singh; three daughters : Gian Kaur, Dalip Kaur and Ajit Kaur; and a widow – Ravel Kaur. It was stated that only a small portion of the land in dispute was ancestral and rest of the property was the self-purchased property of deceased Kishan Singh. It was further alleged that during his lifetime Gian Singh had received money for his part of the share and had also executed sale deeds dated 19.12.1979, 15.12.1980, 04.06.1981 for land measuring 10 *kanals* 16 *marlas* in favour of Ajit Singh (defendant-appellant No.1). The defendant-appellants also set-up a Will dated 14.02.1979 allegedly executed by Kishan Singh in favour of the defendant-appellants.

The defendant Nos.4 to 6 in their written statement averred that they had purchased land measuring 17 *kanals* 7 *marlas* from the defendant-appellants vide sale deed dated 22.04.1991 for valuable consideration.

The Trial Court framed the following issues :

1. Whether the plaintiff is entitled for possession as prayed for ? OPP
2. Whether suit is time barred ? OPP
3. Whether suit is not maintainable in present form ?
OPD
4. Whether the suit is bad for non-joinder of
necessary party ? OPD
5. Whether the plaintiff has concealed material facts

from the Court ? OPD

6. Whether the plaintiff has no *locus standi* to file the present suit ? OPD

7. Relief.

On the basis of the pleadings of the parties and the evidence produced, vide judgement and decree dated 26.04.2016 the Trial Court decreed the suit of the plaintiff-respondents holding them, along with defendant Nos.7 and 8, to be jointly entitled to the joint possession to the extent of 1/9th share of Gian Singh being his legal heirs in the land in dispute. The Trial Court found that the defendant-appellants had miserably failed to prove the Will dated 14.02.1979 in their favour and that the said Will had not even been placed on the record. It was also found that the defendant-appellants had failed to prove the sale deeds allegedly executed by Gian Singh in favour of Ajit Singh (defendant-appellant No.1). The Trial Court also held that mutation no.2219 dated 23.04.1990 in favour of the defendant-appellants was entered on the basis of the alleged Will dated 14.02.1979 but said Will had not been proved on the record and that even in the pedigree table on the back of the mutation sheet the names of all the legal heirs of deceased Kishan Singh were not mentioned.

Aggrieved by the judgment and decree passed by the Trial Court, two appeals were filed before the lower Appellate Court - one by the defendant-appellants and the other by the defendant Nos.4 to 6. Vide judgement and decree dated 17.04.2018 the lower Appellate Court dismissed the appeal of the defendant-appellants and allowed the appeal of the defendant Nos.4 to 6. Hence, the present regular second appeal by the defendant-appellants.

Learned counsel for the defendant-appellants has contended that the Courts below have erred in decreeing the suit for joint possession filed by the plaintiff-respondents. As per counsel, the evidence on the record proved that Gian Singh had sold his share in the land in dispute in favour of Ajit Singh (defendant-appellant No.1) vide sale deeds dated 19.12.1979, 15.12.1980 and 04.06.1981. It was also contended that Kishan Singh had died on 13.04.1979 and before his death he had executed a valid Will dated 14.02.1979 in favour of the defendant-appellants.

Heard.

The counsel for the plaintiff-appellants has been unable to satisfy this Court as to how the defendant-appellants could claim to have purchased the share of Gian Singh vide the three sale deeds when the sale deeds Ex.DW1/D and Ex.DW1/E do not relate to the land in dispute. The description of the land given in these sale deeds is not that of the land in dispute involved in the present case. The lower Appellate Court found that the defendant-appellants had not adduced any evidence to connect these sale deeds with the land in dispute. Further, on the one hand the defendant-appellants have contended that the share which came to Gian Singh was sold in favour of Ajit Singh (defendant-appellant No.1) while on the other hand they set-up a Will dated 14.02.1979 left by Kishan Singh whereunder the property of Kishan Singh was inherited by the defendant-appellants. The sale deeds allegedly in favour of Ajit Singh (defendant-appellant No.1) are all of dates after the death of Kishan Singh i.e. 13.04.1979. So if the defendant-appellants had inherited the land in dispute on 13.04.1979 after the death of Kishan Singh on the basis of the Will left by him, there was no occasion for Ajit Singh (defendant-appellant No.1) to buy the land in dispute

from Gian Singh vide sale deeds dated 19.12.1979, 15.12.1980 and 04.06.1981. Though the counsel for the defendant-appellants vehemently contended that the judgements and decrees of the Courts below are against the record, he could not point to any cogent and convincing evidence which had been mis-read by the Courts below.

No other argument has been raised by learned counsel for the plaintiff-appellants. No question of law, much less any substantial question of law, arises for determination in the present case.

Before parting, it is to be noted that on 25.04.2022 the following order was passed in the present regular second appeal :

“This is a regular second appeal of the year 2018 which has been adjourned repeatedly on the requests made by the learned counsel for the appellants. Today, again, a request has been made on behalf of learned counsel for the appellants on the ground that the counsel is in personal difficulty. Though there is no ground made out for any further adjournment, however, in the interest of justice, one last opportunity is granted to the counsel for the appellants to argue the matter subject to payment of Rs.5,000/- as costs to be deposited with the Punjab & Haryana High Court Bar Association, Chandigarh.

List on 17.08.2022.

It is made clear that in case the matter is not argued on the next date of hearing the same shall be dismissed for non-prosecution.”

The costs as imposed on 25.04.2022 have not been deposited with the Punjab & Haryana High Court Bar Association, Chandigarh.

In view of the discussion above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The present regular second appeal is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

23.08.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO