

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

RSA-520-1990(O&M)

Date of decision:-20.2.2023

Mohinder Singh (since dead) through his LRs

...Appellants

Versus

Gurmit Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Paramjit Batta, Advocate
for the appellants.

Mr.K.G. Chaudhary, Advocate
for respondents No.1 to 4.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Mohinder Singh had brought a suit against defendants Gurmit Singh, Darshan Singh, Jit Singh, Gurmail Singh and Gobinder Singh sons of Jugraj Singh as well as against Pargat Singh son of Jang Singh, residents of Salabatpura, Tehsil Rampura Phul, District Bathinda, seeking a declaration that he is owner in possession of the land measuring 8 kanals, fully detailed in the head note of the plaint.

2. As per the case of the plaintiff, he had purchased the suit land from Gobinder Singh defendant in the year 1971 vide a registered sale deed and ever since he has been in possession of such property as owner to the knowledge of defendants; even otherwise, he has become owner by way of adverse possession since the defendants did not raise any objection for more than 12 years. According to the plaintiff, he is exclusive owner

of the suit property and defendants have no right or title to the same.

3. On getting notice, only defendants No.1 and 2 put in appearance and offered a contest by way of filing a written statement denying the averments in the plaint, rather asserting that Gobinder Singh defendant was co-owner with other defendants and he could not sell the suit property to the plaintiff beyond his share. The defendants submitted that they are entitled to get separate possession of their shares by way of partition.

4. The remaining defendants did not appear despite service, as such were proceeded against ex-parte.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner in possession of the suit land? OPP.
2. Relief.

7. Both the parties led evidence in support of their respective claims.

8. During the course of his evidence, the plaintiff got his statement recorded as PW1. The plaintiff further examined Mukhtiar Singh as PW2, Naranjan Singh as PW3. He tendered in evidence documents Ex.P1 to Ex.P7.

9. In rebuttal, defendant Gurmit Singh had appeared as DW1.

10. After hearing the learned counsel for the parties, the trial

Court of Sub Judge Ist Class, Phul decided issue No.1 in favour of the plaintiff and against the defendants. As a result of such finding vide judgment and decree dated 22.12.1987, the suit of the plaintiff was decreed to the effect that plaintiff Mohinder Singh is owner in possession of the suit land exclusively.

11. Defendants were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Bathinda, which was assigned to Additional District Judge, Bathinda, who vide judgment and decree dated 9.12.1989 accepted the appeal partly and modified the impugned judgment and decree to the extent that Mohinder Singh respondent/plaintiff is in established possession of the suit land as a co-sharer, subject to adjustment of the rights of other co-sharers at the time of partition.

12. Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiff has filed the present regular second appeal before this Court, notice of which was issued and the respondents have appeared through counsel.

13. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

14. A perusal of the judgment and decree passed by the trial Court goes to show that the trial Court has not understood factual and legal position in a proper manner. While deciding issue No.1, the trial Court in para No.7 of the judgment has observed that a co-owner cannot transfer any share of the joint property in excess of his share and any

vendee from a joint owner acquires the title to the joint property, subject to the partition, which may be effected between the co-owners ultimately. The trial Court has made reference to the landmark authority on the subject i.e. **Bhartu Versus Ram Sarup, 1981 PLJ 204** by Full Bench of this Court. But then the wrong interpretation of that judgment was done by the trial Court observing that the ruling admits an exception where the total exclusion of the other joint owners is established. It has been observed that as per entries in the jamabandi for the year 1972-73 as well as in khasra girdawaries, the plaintiff is shown to be in possession of the suit property to the exclusion of other joint owners and sale deed in favour of plaintiff was executed by Gobinder Singh Ex.P1 on 10.9.1971 and since then the plaintiff has been in possession of the suit property to the exclusion of other co-owners of said Gobinder Singh.

15. Although the trial Court has not given a clear finding but then the observations made are with regard to claim of adverse possession. However, in appeal, learned Additional District Judge, Bathinda had appreciated the factual and legal position in a very minute and analytical manner coming to the conclusion that the possession of plaintiff was in the capacity of a co-sharer being transferee from a co-sharer in the joint land and he can certainly be not taken to be exclusive owner of that piece of land. For ready reference, the operative part of the judgment comprising paras No.7 and 8 is being reproduced as under:

7. There is hardly any dispute about the land purchased. Mohinder Singh had purchased 8 kanals of land comprised in khasra no.313 min from Gobinder Singh vide sale deed Ex.P1.

Gobinder Singh is one of the co-sharers Khasra No.313 in all as is found from the copy of jamabandi Ex.D1 for the year 1967-68 measured 16 kanals 1 marla. Thereafter jamabandi for the year 1972-73 had come into existence. After the sale to the plaintiff this khasra number has been bifurcated into two parts. Gobinder Singh etc., as is shown in the copy of jamabandi Ex.D1 had purchased this khasra number from Mukhtiar Singh etc., the original allottees. Copy of jamabandi Ex.P4 for the year 1972-73 indicates as if Gobinder Singh was in possession of the land at the time of sale. In this copy of jamabandi the possession of Mohinder Singh vendee has been shown. In copy of jamabandies Ex.P3 for the year 1977-78, Ex.P2 for the year 1982-83 also the possession of the suit land has been shown of Mohinder Singh. Copies of khasra girdawari on the file also reveal as such. Gurmail Singh appellant defendant in his statement as DW1 has stated that the co-sharers have been cultivating the land separately according to their share. But there is absolutely nothing to show if there has been partition of the land. It looks that the co-sharers for their own convenience had separate possessions according the shares. But it cannot be forgotten that a co-sharer has got interest in every inch of land. Undoubtedly a co-sharer in exclusive possession of the land can transfer the specific khasra number of the land in possession according to the share but this is subject to the adjustment of the rights of other co-sharers at the time of partition.

8. *Mohinder Singh undoubtedly is in long possession of*

the land but the long possession has not ripened into exclusive ownership. Mohinder Singh in his statement no doubt asserts that he is in uninterrupted possession of the land but he nowhere states that his possession is hostile. So possibly, it cannot be stated that Mohinder Singh is the exclusive owner of the land in dispute. The finding of the trial Court on issue No.1 is modified accordingly.

16. I find that the judgment and decree passed by learned Additional District Judge, Bathinda does not suffer from any illegality or infirmity, rather it is based upon proper appreciation of evidence and correct interpretation of law. The error committed by the trial Court was rightly rectified by learned Additional District Judge, Bathinda by way of modification in the judgment and decree passed by the trial Court clarifying that possession of the plaintiff was as a co-sharer subject to the adjustment of the rights of the other co-sharers at the time of partition.

17. Although during the arguments learned counsel for the appellant/plaintiff tried to built up a case that plaintiff is to be taken as exclusive owner of the piece of land purchased by him vide registered sale deed being in exclusive possession since the date of his purchase without any objection from other co-sharers but such submissions made by him in that regard cannot be accepted. As it comes out vendor of the plaintiff was a co-sharer in the joint Khata although he was in exclusive possession of the piece of land. The alienation made by him is to be taken as sale of share. He could deliver possession of that piece of land to the vendee, the plaintiff. As has been clarified in the judgment Bhartu Versus Ram Sarup (supra), a co-sharer has right and interest in every inch of the joint land

and possession of one co-sharer is possession of all the co-sharers in the eyes of law. Therefore, under the circumstances since jointness of the land do not come out to have ended, the rights of other co-sharers in the suit land does not get extinguished and plaintiff cannot confer upon himself the status of exclusive owner.

18. As regards the judgment **Ravinder Kaur Grewal & Ors. Versus Manjit Kaur & Ors, 2019(4) RCR(Civil)1** referred to by learned counsel for the appellant, the same does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

19. The plaintiff having purchased land from one of the co-sharer in joint Khata is to be taken in possession of the suit land as a co-sharer and it being so, he can certainly not claim that he has become owner by way of adverse possession since the basic ingredient of adverse possession is unlawful possession, whereas possession of the plaintiff is certainly legal and lawful.

20. No substantial questions of law arises.

21. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

20.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No