

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

RSA-2559-1993(O&M)

Reserved on:-11.5.2023

Date of Pronouncement:-17.5.2023

Rano Devi

...Appellant

Versus

Shingar Kaur (since dead) through her LRs

...Respondent

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

Present: Mr.N.S. Pawar, Advocate
for the appellant.

Mr.Anil Shukla, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Rano Devi wife of Sadhu Singh, resident of Prem Nagar, Morinda, Tehsil and District Ropar had brought a suit against defendant Shingar Kaur widow of Gajjan Singh, resident of that very area, seeking a decree for permanent injunction restraining the defendant from interfering into her peaceful possession over land bearing khewat/khatauni no.750/953, khasra no.995/2(1-16) situated in the area of Morinda, Tehsil and District Ropar as per jamabandi for the year 1983-84.

2. As per the version of the plaintiff, Gajjan Singh, husband of Shingar Kaur defendant along with Gurdev Singh were owners of the land, which was orally partitioned, resultantly the land in dispute had been given to Gurdev Singh, who had sold the same to the plaintiff vide a

registered sale deed dated 29.11.1985; mutation on the basis of sale deed was also sanctioned in favour of the plaintiff on 6.12.1985, therefore the plaintiff is owner in possession of such property with which the defendant has no concern; the defendant had instituted Civil Suit No.386 of 17.12.1985, which was decided, however the plaintiff was not given the right to establish her claim.

3. On notice, the defendant appeared and filed written statement contesting the suit coming up with a version that Civil Suit No.386 of 17.12.1985 filed by her was decided on merits, as such she is owner in possession of this property. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

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

1. Whether Gurdev Singh was the exclusive owner in possession of the land in dispute by partition as alleged? OPP.

2. Whether the plaintiff is owner in possession of the land in dispute by purchase from Gurdev Singh? OPP.

3. Whether the plaintiff is entitled to the injunction prayed for? OPP.

4. Relief.

5. The parties were afforded opportunities to lead their evidence.

6. During the course of her evidence, the plaintiff got her attorney Sadhu Singh examined as PW1 and tendered in evidence documents Ex.P1 to Ex.P6.

7. In rebuttal, the defendant got her statement recorded as DW1

and tendered in evidence copy of judgment Ex.D1 and copy of decree-sheet as Ex.D2.

8. After hearing arguments, the trial Court of Senior Sub Judge, Ropar vide judgment and decree dated 21.2.1990 gave issue-wise findings and decreed the suit of the plaintiff restraining the defendant from interfering with the peaceful possession of the plaintiff over the suit land.

9. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Ropar, which was assigned to Additional District Judge, Ropar, who vide judgment dated 22.9.1993 accepted the appeal, resultantly the judgment and decree passed by the trial Court were set aside and the suit brought by the plaintiff was dismissed.

10. The plaintiff is feeling dissatisfied with the said judgment recorded by Additional District Judge, Ropar and has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Ropar be set aside.

11. Notice of the appeal was given to the respondent, who has put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record and I find that the judgment passed by the trial Court is result of proper appraisal of evidence and correct interpretation of law. Learned trial Court had noticed that as per jamabandi for the year 1983-84 Ex.P4 Gurdev Singh son of Bir Singh was shown to be owner to the extent of $\frac{1}{2}$ share in khasra no.995(4 bigha 0 biswas) and vide registered

sale deed dated 29.11.1985 Ex.P2, Gurdev Singh had sold 1 bigha 16 biswas of land out of that khasra number in favour of the plaintiff for a sum of Rs.10,000/- delivering possession of specific portion of land bounded on the east by passage and land of Gurbux Singh, west land of the vendor, north-Shangaro etc. - defendant and south – 2 karam passage left by the vendor. As per mutation No.3998 sanctioned on the basis of sale deed in favour of plaintiff on 6.12.1985; Khasra No.995(4bigha 0 biswa) was divided by the revenue authorities into three parts which were assigned min numbers 995/1(2B-0B), 995/2(1B-16) and 995/3(0-4). The northern part was assigned khasra no.995/1. The intervening part towards southern side was given khasra no.995/2 and the last part towards southern side was described as khasra no.995/3 and khasra no.995/2(1B – 16B) was mutated in favour of the plaintiff on the basis of sale deed Ex.P2 and entry regarding sanctioning of mutation was there in remarks column of the jamabandi Ex.P4 and khasra girdawari Ex.P5 indicates that plaintiff is recorded in self cultivation of khasra no.995/2(1B-16B) and that possession continued subsequently also. The defendant Shingar Kaur appearing as DW1 had stated in her cross examination that she is in possession of the land in dispute having installed tubewell and constructing a kotha therein, whereas plaintiff is in separate possession. She had produced copy of judgment and decree Ex.D1 and Ex.D2 in earlier suit. The trial Court has rightly concluded that oral partition had already taken place between Gajjan Singh and Gurdev Singh predecessor in interest of Rano Devi plaintiff; Gurdev Singh was in possession of a specific part of the land out of khasra no.995 measuring 4 bighas 0 biswa

which was sold by him to the plaintiff vide sale deed Ex.P2. In pursuance of the oral partition and sale deed, specific portion held by Gurdev Singh stood transferred to the plaintiff. The plaintiff is continuously being recorded in possession of the land in dispute bearing khasra nos.995/2 measuring 1 bigha 16 biswas and such defendant has no right to interfere in such possession of the plaintiff. With regard to existence of kotha and tubewell as claimed by the defendant, the plaintiff has not raised any dispute in that regard and in the written statement defendant has not taken any plea that kotha and tubewell are there in khasra No.995/2(1-16).

13. The plaintiff had proved his case by bringing enough cogent and convincing evidence on record and the trial Court was justified in decreeing the suit of the plaintiff, whereas the judgment delivered by the First Appellate Court reversing the judgment and decree passed by the trial Court dismissing the suit is not sustainable since it cannot stand judicial scrutiny for the reasons detailed above.

14. As such, the appeal which has got merit stands accepted. The judgment and decree passed by Additional District Judge, Ropar are hereby set aside, whereas the judgment and decree passed by the trial Court are restored. The appeal is allowed with costs throughout.

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

17.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No