

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1828 of 1991 (O&M)

Date of Decision: 24.3.2023

Kartar Singh

... Appellant

Versus

Bhagwan Kaur

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Tejas Bansal, Advocate,
for the appellant.

Mr. Rajinder Goel, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The present appeal has been filed by the defendant-Kartar Singh against the judgment and decree dated 23.08.1991 passed in Civil Appeal No.90-CA of 1990 titled as *Kartar Singh v. Bhagwant Kaur* whereby the judgment and decree dated 25.08.1990 passed in Civil Suit No.596-C of 1988 titled as *Bhagwant Kaur v. Kartar Singh* thereby decreeing the suit of the plaintiff, had been affirmed and the appeal of the defendant Kartar Singh had been dismissed.

2. For the sake of convenience, the parties shall be referred to hereinafter as per the original nomenclature as mentioned in the suit.

3. Brief facts of the case relevant for the purpose of disposal of this appeal are that the plaintiff Bhagwant Kaur filed the above mentioned civil suit on the averments that she was co-sharer in the land

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comprised in Khewat No.221 Khatuni No.363 to 367 (hereinafter mentioned as “disputed land”) fully detailed out in the head note of the plaint. Smt. Nand Kaur who was another co-sharer had sold her 1/6th share in the disputed land to the defendant Kartar Singh vide a registered sale deed dated 16.12.1987. The sale consideration amount was shown to be Rs.1,27,359.37 paise though infact it was much lesser and excess amount had been added to defeat the rights of the pre-emption of the plaintiff in the disputed land. The plaintiff while alleging that she had got a superior right of pre-emption against the defendant who was stranger and was not related to the vendor, prayed for passing a decree for possession of the disputed land by way of pre-emption.

4. In response to the notice, the defendant appeared and filed written statement alleging that the plaintiff was not a co-sharer in the disputed land. While admitting that Sh. Nand Kaur had sold her share in the disputed land to the defendant, it was stressed that the sale consideration amount as shown in the sale deed was correct and had been actually fixed in good faith and paid by him to the vendor. While further alleging that the sale of disputed land being made by the female was not pre-emptible under Section 15 (2-A) of the Punjab Pre-emption Act, the dismissal of the suit had been prayed for.

5. The plaintiff filed replication controverting the pleas taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were settled by learned trial Court vide order dated 28.02.1989:-

“1. Whether the plaintiff has got a superior right of

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pre-emption? OPP.

2. Whether the sale price was fixed in good faith and was actually paid? OPD

3. If issue No.2 is not proved, then what was the market value of the suit land at the time of sale? Oparties.

4. Whether the sale in dispute is not pre-emptable in view of the provisions contained in section 15(2-A) of Punjab Pre-emption Act, as alleged in the written statement, if so, to what effect? OPD.

5. Whether the defendant made improvements on the suit land after the sale, if so, to what amount? OPD

6. Whether the defendant is entitled to stamp registration and scribe charges, if so, to what amount? OPD.

7. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.

8. Whether the plaintiff has no cause of action? OPD.

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

10. Whether the suit of the plaintiff is not maintainable in the present form? OPD.

6. The parties adduced evidence in support of their respective assertions. The plaintiff Bhagwant Kaur examined herself as PW-1 and

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deposed in support of her claim. In documentary evidence, she produced Ex.P-1 copy of mutation No.2747 and Ex.P-2 copy of sale deed dated 16.12.1987 and thereafter closed the same.

7. On the other hand, the defendant appeared as DW-1 and deposed in support of his claim. In documentary evidence, he produced Ex.D1 copy of the sale deed dated 16.12.1987.

8. On appraising the evidence produced on record and after considering the contentions raised by learned counsel for both the parties, the learned trial Court vide judgment and decree dated 25.08.1990 decreed the suit in favour of the plaintiff subject to depositing the sale consideration amount after deducting the jare-panjum amount already deposited, within one month. Feeling aggrieved, the defendant preferred Civil Appeal No.90-CA of 1990 before the First Appellate Authority which too was dismissed vide judgment dated 23.08.1991.

9. The present appeal has been filed assailing the findings as given by the Courts below. It was argued by learned counsel for the appellant-defendant that the impugned judgments and decrees were liable to be set aside as the same were not sustainable in the eyes of law and were based on conjectures and surmises. The learned trial Court did not apply its judicious mind. The learned First Appellate Authority also did not consider the pleas as raised by the appellant in a proper perspective. A specific plea had been taken by the appellant in the written statement that the respondent-plaintiff had no locus standi to file the suit seeking pre-emption of the disputed land as she was not proved to be a co-sharer of the same. However, this fact had not been properly dealt with by the Courts below. The learned

trial Court and learned First Appellate Court committed a grave error by placing reliance upon the mutation Ex.P-1 though the same did not create any title in favour of the plaintiff in respect of the disputed property. Cryptic and non-speaking orders had been passed. Therefore, it was urged that the impugned judgments were liable to be set aside. To fortify his argument, learned counsel for the appellant placed reliance upon authorities cited as **Shyam Sunder and another v. Ram Kumar and another**, 2001 (3) R.C.R. (Civil) 754; **The Commissioner Bruhath Bangalore Mahanagara Palike and another v. Faraula Khan and another**, 2021 (2) R.C.R. (Civil) 793; **Smt. Bhimabai Mahadeo Kambekar (D) Th. LR v. Arthur Import and Export Company & Ors.**, 2019 (3) SCC 191; **Smt. Chanderpati and others v. State of Haryana and others**, 2023 (1) R.C.R. (Civil) 160 and **Ramji Lal v. Gainda Singh and others**, 1971 PLR 470. The ratio of law as laid down in these authorities is that the mutation entries do not by themselves confer title. They were not part of record of rights. No presumption of truth was attached to such document and further that the title has to be established independently in a declaratory suit.

10. Per contra, it was argued by learned counsel for the respondent-plaintiff that there were concurrent findings of fact by the Courts below that the respondent-plaintiff was co-sharer in the disputed land and such findings could not be disturbed in this appeal. He further argued that even otherwise, the entries in the mutation coupled with the fact that the appellant-defendant had not seriously denied the factum of co-sharership of the respondent in the disputed property were sufficient to prove that the respondent-plaintiff was a co-sharer in the said property and had right to

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pre-empt the same. Therefore, it was urged that the appeal was devoid of any merit and was liable to be dismissed. In support of his argument, learned counsel for the respondent placed reliance upon authorities cited as **Mst. Sugani v. Rameshwar Das and another**, 2006 (4) R.C.R. (Civil) 319 and **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar**, 1999 (2) R.C.R. (Civil) 587 wherein it was observed that the finding of fact could not be interfered in the second appeal.

11. I have given due deliberations to the contention raised by both the sides and have minutely scrutinized the evidence placed on record and on perusal thereof, I am of the considered opinion that the findings given by the Courts below do not warrant any interference. The case of the respondent-plaintiff was that she was co-sharer in the joint khewat of which the disputed land was forming a part and hence she had a superior right to pre-empt the sale which was made in favour of the appellant vide sale deed Ex.P-2 as executed and registered on 16.12.1987. It may be mentioned that as on the date of execution of the sale deed and as on the date of filing suit by the respondent-plaintiff, the right to pre-empt the sale was existing in favour of a co-sharer and there is no dispute between the parties on that point. The only point as raised by the appellant-defendant for impugning the judgment and decree passed by the Courts below is that it was wrongly held that the respondent-plaintiff was a co-sharer in the disputed land and had superior claim of pre-emption. It was argued that since the respondent had set up her claim as to being a co-sharer only on the basis of Ex.P-1 copy of mutation No.2747 which could not be considered to be a document of her title in the disputed land, therefore, no decree could be passed in her favour.

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The learned trial Court as well as learned First Appellate Court had observed that the respondent was proved to be a co-sharer in the disputed property. There can undoubtedly be no dispute with regard to the well settled proposition of law that the mutation of land in revenue records does not create or extinguish title over some land. It has no presumptive value of title. However, simultaneously, it is equally well settled that if the title of a party is established on the basis of other independent evidence on record corroborating the mutation entries, then such entry can certainly be taken into consideration. In the instant case, though the appellant in his written statement had denied that the respondent-plaintiff was co-sharer in the disputed property, however, there was no specific denial of this fact by the appellant in his sworn deposition rather during cross-examination, he stated that he did not know that the respondent was having any share in the disputed property or not? Even while cross-examining the respondent, it was suggested that the land in dispute was sold to the appellant by the sister-in-law of the respondent. A perusal of mutation Ex.P-1 reveals that it was sanctioned only on 21.12.1987 in favour of the respondent showing herself to have become co-sharer in the disputed land on the basis of oral will of her husband Niranjn Singh who was co-sharer in the disputed property. The appellant had not raised any objection as to the fact that Sh. Niranjn Singh was previously co-sharer in the disputed property. The respondent-plaintiff had filed the captioned civil suit as on 16.07.1988. There was obviously no probability of incorporation of name of the respondent in the revenue record in the form of jamabandi entries by that time as entries in the jamabandi are incorporated after five years and there is

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nothing on record to suggest that any new jamabandi was prepared during the period from 21.12.1987 to 16.07.1988 qua the disputed land. The learned trial Court had taken due note of this fact. The appellant did not specifically deny the factum of husband of the respondent being co-sharer and subsequently the respondent having become a co-sharer in the joint khewat. Therefore, in my opinion, the learned trial Court had rightly recorded a finding that the respondent-plaintiff was a co-sharer in the joint khewat after due appreciation of evidence produced on record and the learned First Appellate Court had committed no error in affirming those findings. As such, the concurrent findings of the fact as recorded by the Courts below are well reasoned and do not warrant any interference by this Court and deserve to be affirmed. No such substantial question of law has arisen in this case which requires consideration. Hence, finding no merit, the appeal is dismissed.

12. Miscellaneous application(s), if any, also stand disposed of.

24.03.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No