

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

RSA No. 485 of 1997

DATE OF DECISION :- April 11, 2023

Karam Singh

...Appellant

Versus

Sewa Singh and others

...Respondents

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

Present:- Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate for the appellant.

None for the respondents.

1. Briefly stated facts of the case are that plaintiff Karam Singh son of Babu Ram had brought a suit against defendants Sewa Singh, Smt. Surjit Kaur, Inder Kaur, Daljit Singh, Baljit Singh, Kamal Devi and Pushpa Devi, all residents of Village Bhullewal Rathan, Tehsil Garhshankar, District Hoshiarpur seeking a declaration that he is co-owner in possession to the extent of 1/3rd share in Taur No. 28 and House Nos. 50 and 51 of H.B. No. 29, measuring 15 marlas situated at Village Bhullewal Rathan, Tehsil Garhshankar, District Hoshiarpur and that sale deed dated 19.2.1985 is null and void in addition to that craving for grant of permanent injunction restraining defendant No. 2 Smt. Surjit Kaur from taking forcible possession of the property or in the alternative for possession by partition of 1/3rd share of the property.

2. As per version of the plaintiff, the suit property was allotted to Sh. Babu Ram, father of the plaintiff and Sh. Jai Karan Singh and Beant Singh (since dead) now represented by their legal heirs the defendants, in lieu of the property left by him in West Punjab now in Pakistan vide Sanad dated 24.3.1955, such allotment was made by Rehabilitation Department; after death of Sh. Babu Ram, all three sons i.e. plaintiff as well as Beant Singh and Jai Karan Singh acquired the ownership rights in the suit property. When Beant Singh and Jai Karan Singh departed from this mortal world, their legal heirs inherited their 1/3rd share each in the suit property, however, Sewa Singh defendant No. 1, who is a heir of Beant Singh had executed a sale deed with regard to the entire property on 19.2.1985 in favour of defendant No. 2, therefore, the said sale deed is illegal, null and void since he could not sell more than his share which was only 1/12 share. On strength of that sale deed defendant No. 2 wanted to take forcible possession of the suit property not listening to the requests of the plaintiff to desist from doing so giving rise to a cause of action to the plaintiff to bring the suit in question.
3. On being given notice, only defendants No. 1 and 2 put in appearance and offered a contest. In the separate written statements filed by such defendants, defendant No. 1 denied that the plaintiff had any share in the suit property contending that suit property did not form part of Taur No. 28 and House Nos. 50 and 51. The answering defendant further denied that suit property was allotted to Sh. Babu Ram or after death of Sh. Babu Ram, his three sons inherited that property or in that manner the plaintiff and legal heirs of Beant Singh and Jai Karan Singh have got any right or interest in the property in question.

4. Defendant No. 1 admitted sale of property to defendant No. 2 contending that the said sale was perfectly valid and he was competent to execute the sale deed. The answering defendant contended that he had been in adverse possession of the suit property for over 20 years and he had become its owner before its sale to defendant No. 2.

5. In the written statement submitted on behalf of defendant No. 2, he took up a preliminary objection that suit was not maintainable in the present form as the plaintiff was not in possession of the suit property. On merits such defendant while denying the assertions in the plaint came up with a plea that she had purchased the suit property from the previous owner i.e. defendant No. 1. Both the defendants prayed for dismissal of the suit.

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

- 1) Whether the plaintiff is co-sharer in possession of the suit property?OPP
- 2) Whether Sewa Singh had a right to sell the suit property vide sale deed dated 19.1.1955? If so to what effect.
- 3) Whether the sale deed was executed for consideration? OPD
- 4) Whether the suit property is ancestral property qua the plaintiff, his brothers and vendor?OPP.
- 5) Whether the plaintiff is entitled to declaration prayed for? OPP
- 6) Whether the plaintiff is entitled to permanent injunction prayed for?OPP.
- 7) Whether the plaintiff is entitled to possession of one third share of the suit property by way of partition?
- 8) Whether defendant and his father had been in adverse possession of the suit property for the last more than 25 years as alleged, if so to what effect?OPD.

9) Whether the plaintiff is estopped from filing the suit by his act and conduct?OPD.

10) Relief.

7. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

8. After hearing arguments, the suit of plaintiff was dismissed by the trial Court of Senior Sub Judge, vide judgment and decree dated 9.4.1990, however, on an appeal having been preferred by the plaintiff the case was remanded to the trial Court with a direction to appoint a local Commissioner to fix the identity of the property and then to decide the case afresh.

9. After receipt of case by way of remand in the trial Court, a local Commissioner was appointed who had submitted his report. Thereafter the case was decided afresh by giving issues wise findings.

10. Issue no. 1 was decided against plaintiff whereas issue No. 8 was decided in favour of defendant No. 1. Issues No. 2 and 3 were decided in favour of defendants. Issue No.4 was decided against plaintiff. Issue No. 5 was decided against the plaintiff. Issue No. 6 was decided against the plaintiff. Issue No. 7 was decided against the plaintiff. Issue No. 9 was decided in favour of defendants.

11. As a result of issue wise findings vide judgment dated 13.2.1993 the suit of the plaintiff was dismissed. On an appeal having been preferred by the plaintiff before District Judge, Hoshiarpur the same was assigned to Additional District Judge, Hoshiarpur, who vide judgment and decree dated 20.11.1996 had dismissed the said appeal.

12. Still feeling aggrieved, the plaintiff has knocked at the door of this Court by way of filing Regular Second Appeal, notice of which was given to respondents. Earlier respondents No. 1 and 2 had put in appearance through counsel but subsequently they stopped appearing, therefore, the Regular Second Appeal is being disposed of after hearing learned counsel for the appellant plaintiff.

13. I have heard learned counsel for the appellant plaintiff besides going through the record.

14. The trial Court in light of pleadings of the parties and on in depth analysis of the evidence brought on record by the contestants while considering the legal position had rejected the claim of the plaintiff by referring to the Sanad dated 24.3.1955 Ex.PW6/A issued by Managing Officer, Rehabilitation Department. The trial Court had observed that Taur No. 28 and Houses No. 50 and 51 in Village Bhullewal Rathan were allotted not to Babu Ram but to the plaintiff and his two brothers Beant Singh and Jai Karan Singh on 19.1.1960 and even that allotment remained on papers since there is nothing on record to prove that plaintiff along with other brothers Beant Singh and Jai Karan Singh came in possession of that property. Neither the area of the allotted property nor the boundaries are mentioned in Sanad in question from where plaintiff could come to know that area of property is 15 marlas and it's boundaries are East : Khushi Ram, West : Street; North : Nirmal Singh and South Street as have been given by him in head note of the plaint.

15. With regard to the Shajra Shikni Ex.PW4/A got produced by plaintiff from PW4 Onkar Singh, the trial Court has observed that this document is also of not much help to the plaintiff since the original

document did not bear signatures of any Revenue Officer and rather it is in torn condition; no date of its preparation is mentioned, therefore, this document is incapable of proving identity of the property. With regard to sale deed Ex.P1 executed by Beant Singh brother of the plaintiff, vide this document Beant Singh later on had sold Taur bearing No. 28 and houses No. 50 and 51 for Rs.400/- in favour of Khushi Ram on 26.4.1965 which sale deed had not been challenged by the plaintiff. The trial Court has observed that Taur and house numbers mentioned in the sale deed are the same which had been given in Sanad Ex. PW6/A. Plaintiff could challenge that sale and connect that land with allotted property on the basis of numbers but he did not opt to do so rather he had challenged sale of that property which had been made by defendant No. 1 in favour of defendant No. 2 vide sale deed dated 19.2.1985 Copy of that being Ex.D3. However, in the said sale deed numbers of the sold property have not been mentioned so as to connect the same with property recorded in Sanad Ex.PW6/A. It has further been observed that there has not been any evidence that plaintiff had been in possession of any portion of property at any time rather plaintiff himself had admitted in his statement that he is residing in village Cholang, which is at a distance of 20/25 kms. from the disputed property, therefore, the plaintiff was not proved to be co-sharer in possession of the suit property whereas claim of defendant and his father being in adverse possession of suit property of last more than 25 years was accepted. The trial Court had returned a categorical finding that suit property cannot be held to be ancestral qua the plaintiff and his brothers Beant Singh and Jai Karan Singh and observed that Beant Singh alone had been in possession of the property for about 27/28 years he had constructed houses on it in his own right to

which the plaintiff did not raise any objection and after death of Beant Singh defendant No. 1 Sewa Singh had inherited his property, therefore, sale deed executed by Sewa Singh dated 19.2.1985 in favour of defendant No. 2 Smt. Surjit Kaur was held to be legal and valid. The plaintiff was not found entitled to decree for declaration, permanent injunction or possession of 1/3rd share by way of partition.

16. The Appellate Court of Additional District Judge, Hoshiarpur agreed with the trial Court with regard to findings on all the issues. It was observed that appellant plaintiff had failed to identify the property in dispute though a local Commissioner was appointed for demarcation but he after visiting the spot failed to identify the property on the grounds that due to construction demarcation was not possible and further more demarcation was not possible because length and breadth of area of allotted property was not mentioned in Sanad.

17. With such concurrent findings being there which are based on proper appraisal of and correct interpretation of law, I do not find any reason to upset the judgments passed by the trial Court which do not come out to be suffering from any illegality or infirmity.

18. I do not find merit in the Regular Second Appeal. No substantial question of law arises. The appeal is dismissed accordingly.

(H.S. MADAAN)
JUDGE

April 11, 2023
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No