

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

RSA-1426-2014(O&M)

Reserved on:-20.4.2023

Date of Pronouncement:-1.5.2023

Nirmal Singh and others

...Appellants

Versus

Malkiat Singh and others

...Respondents

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

Present: Mr.Vivek K. Thakur, Advocate
for the appellants.

Mr.Sanjiv Manrai, Sr.Advocate with
Ms.Neha, Advocate
for respondent No.1.

Mohd.Yousaf, Advocate
for respondents No.4 to 6.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Naurang Singh, Nirmal Singh sons of Sher Singh, Chamkaur Singh, Kulwant Singh sons of Mukand Singh, Sukhdev Kaur widow of Mukand Singh, Jagtar Singh, Manpreet Singh, Rupinder Singh sons of Naurang Singh, residents of village Khanpur, Tehsil Malerkotla had filed a suit against defendants i.e. Malkiat Singh son of Dalip Singh, resident of Malerkotla and Gurnam Singh son of Sher Singh, resident of village Khanpur, Tehsil Malerkotla further impleading defendants Kirpal Singh, Rupinder Singh, Baljit Singh

sons of Bachan Singh, residents of village Sihan Daud, Tehsil and District Ludhiana as proforma defendants, seeking a declaration that sale certificate dated 6.11.2001 issued by the Court of Sh.Rakesh Kumar, the then Additional Civil Judge (Sr.Divn.), Malerkotla in execution petition titled 'Malkiat Singh Versus Gurnam Singh' in respect of 1/5th share out of land measuring 118 bighas 16 biswas comprised in khata no.178/289, 290, 291 and 292 situated at village Khanpur i.e. 23 bighas 15 biswas out of land in execution No.37 of 7.8.1998, is illegal, null and void, non-existent, result of fraud played by defendants No.1 and 2 and the same has no legal effect on the rights of the plaintiffs qua the suit land and for permanent injunction restraining the defendant No.1 from alienating in any manner the suit land and from dispossessing the plaintiffs illegally and forcibly from the suit land.

2. As per the version of the plaintiffs, originally plaintiffs along with defendant No.2 were joint owners in possession of land measuring 142 bighas 6 biswas; defendant No.2 had sold land measuring 23 bighas 10 biswas to defendants No.3 to 5 besides selling 4 bighas of land to plaintiffs No.3 and 4, in that way, the defendant had sold his share except the land measuring 2 bighas 2 biswas being 1/4th share out of the land measuring 10 bighas 9 biswas; defendant No.1 had filed a suit for recovery against defendant No.2 and got attached land of defendant No.2 to the extent of 2 bighas 2 biswas; subsequently the defendant No.1 got the land auctioned to the extent of 23 bighas 15 biswas by playing fraud upon the Court; he himself had purchased the land and got issued the sale certificate from the Court in that regard; that sale certificate was

challenged in the suit. According to the plaintiffs defendant No.2 was the owner to the extent of 2 bighas 12 biswas only. When the defendants refused to admit the claim of the plaintiffs, they filed the suit in question.

3. On notice, the defendants had put in appearance. Defendant No.1 filed a written statement submitting that he had filed the suit for recovery against defendant No.2, which was decreed on 25.3.1998 by Additional Civil Judge (Sr.Divn.), Malerkotla; he had purchased land measuring 23 bighas 15 biswas belonging to defendant No.2 in auction with permission of the Court. Such defendant submitted that auction of the land was legal and valid and there is no reason to set it aside; the sale certificate dated 6.11.2001 has already been issued in favour of defendant No.1 and he has every right to deal with the land so purchased by him. Such defendant took various legal objections while coming up with a prayer for dismissal of the suit.

In the separate written statement filed by defendants No.3 to 5, they admitted joint ownership of plaintiffs with defendant No.2, however denying most of the allegations for want of knowledge though raising various legal pleas praying for dismissal of the suit.

Though defendant No.2 had put in appearance in the Court but did not file written statement and subsequently absented, as such was proceeded against ex-parte.

4. The plaintiffs had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled for the declaration, as prayed for?

OPP.

2. Whether the plaintiffs are entitled for the permanent injunction as prayed for? OPP.
3. Whether the present suit is not maintainable? OPD.
4. Whether plaintiffs have no cause of action to file the present suit? OPD.
5. Whether the plaintiffs have not come to the Court with clean hands? OPD.
6. Whether the present suit is time barred? OPD.
7. Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD.
8. Whether the defendant No.1 is bonafide purchaser of the land measuring 23 bighas 15 biswas for consideration and sale certificate dated 6.11.2001 is a legal and valid document? OPD.
9. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.

10.Relief.

5. The parties led evidence in support of their respective claims.
During the course of their evidence, the plaintiffs examined Jagtar Singh as PW1 and Nirmal Singh as PW2.

In rebuttal, the defendant No.1 Malkiat Singh got his statement recorded as DW1 besides examining Kirpal Singh proforma defendant as DW2.

6. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Malerkotla vide judgment and decree dated

20.7.2009 had decreed the suit of the plaintiffs partly declaring the sale certificate dated 6.11.2001 to be illegal, null and void having no legal effect on the rights of the plaintiffs and it was set aside to the extent of 4 bighas only. Defendant No.1 was restrained from alienating the land measuring 4 bighas out of 23 bighas 15 biswas situated at village Khanpur, Tehsil Malerkotla.

7. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Sangrur, which was assigned to Additional District Judge, Sangrur, who vide judgment and decree dated 30.9.2013 dismissed the same.

8. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and their suit be decreed to full extent.

9. Notice of the appeal was issued to the respondents. Respondent No.1 Malkiat Singh has appeared through counsel so have respondents No.4 to 6 through a different counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. In this case the trial Court by thorough and deep analysis of the evidence brought on record by the parties in light of their pleadings and considering the legal position on the subject had observed that as per the admitted position, defendant No.1 had filed a suit for recovery against defendant No.2, which was decreed and during the course of execution proceedings, the land of defendant No.2 was put to auction, which was

was purchased by defendant No.1 with permission of the Court and sale certificate of the land measuring 23 bighas 15 biswas being 1/5 share in 118 bighas 16 biswas had already been issued in favour of defendant No.1 on 6.11.2001 by the Court of Additional Civil Judge (Sr.Divn.), Malerkotla. Para Nos.11 and 12 of the judgment are quite relevant, which for ready reference are being reproduced as under:

11. On the one hand the plaintiffs claim that Gurnam Singh (defendant No.2) was not owner in possession of the land measuring 23 bighas 15 biswas and as such this sale certificate is liable to be set aside, whereas the defendant No.1 is claiming that he is bona fide purchaser of the above land and moreover, Gurnam Singh was recorded owner in possession of the above land at the time of auction of the said property.

12. The perusal of the record particularly Jamabandies (Ex.P1 and Ex.P2) provides that the land of the plaintiffs was joint with defendant No.2 in which the defendant No.2 had 1/5th share. This land was comprised of four khewats. In khewat No.55, Khatauni No.82, the land of the plaintiffs was joint with defendant No.2 to the extent of 23 bighas 10 Biswas. Their joint holding was to the extent of 10 Bighas 9 Biswas in Khewat No.211, Khatauni No.320. These two above Khewats have no concern with the sale certificate dated 6.11.2001 as the land of these Khewats is not included in it. The sale certificate relates to the land measuring 118 Bighas 16 Biswas earlier comprised of Khata No.178/289 to 292 and now comprised of Khewat No.213, Khatauni No.323 to 326 and Khewat No.214,

Khatauni NO.327 to 329. The further perusal of Jamabandi (Ex.P2) provides that Gurnam Singh had already sold the land measuring 4 Bighas to Chamkaur Singh and Kulwant Singh sons of Mukand Singh and entry with regard to sale of aforesaid land had also taken its effect in column of ownership. Moreover, there is a note in red ink in Ex.P2 that Gurnam Singh has sold the land measuring 4 bighas and he is owner to the extent of 19 Bighas 15 Biswas only. Hence it is abundantly clear that Gurnam Singh was not owner in possession of the land measuring 23 Bighas 15 Biswas which has been purchased by defendant No.1 during auction proceedings. The claim of the plaintiffs that Gurnam Singh (defendant No.2) was owner to the extent of 2 Bighas 12 Biswas only as he had sold the land measuring 23 bighas 10 Biswas to Kirpal Singh, Rupinder Singh and Baljit Singh is not correct because the land sold to above named vendees is not included in the sale certificate and this land has been sold by Gurnam Singh out of the land comprised of Khewat No.55, Khatauni NO.82 of Jamabandi (Ex.P-1). Though Gurnam Singh has sold the land more than his share in above Khewat but this sale has no bearing on the sale certificate as the land of this Khewat is not included in the sale certificate.

12. In view of that discussion, the trial Court had rightly come to the conclusion that Gurnam Singh was owner in possession of 19 bighas 15 Biswas of land out of land measuring 118 Bighas 16 Biswas comprised of Khata No.178, Khatauni NO.289, 290, 291 and 292, however, the sale certificate was issued for the excess area by 4 bighas. Accordingly, it was

set aside to that extent.

13. The First Appellate Court found itself in agreement with the trial Court with regard to the conclusion reached, in that way affirmed the findings upholding the judgment and decree passed by the trial Court and dismissed the appeal.

14. No fault can be found with the sale certificate for the area 19 Bighas 15 Biswas since the land is still joint. As had been rightly observed by the Courts below, the excess land sold in one khewat can be adjusted in other khewat during partition proceedings.

15. I find that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

16. No substantial question of law or fact arises in this appeal.

17. The appeal stands dismissed accordingly.

The interim order dated 30.7.2015 passed by this Court directing the parties to maintain status quo regarding the property in the hands of defendant No.1 – Malkiat Singh thus comes to an end.

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

1.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**