Neutral Citation No. : **2023:PHHC:156055**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

109

RSA-1203-2018 (O&M)
Decided on : 05.12.2023

Hari Krishan Joshi and another

. . . Appellant(s)

Versus

Jagdish Lal and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Aditya Dassaur, Advocate
for the appellant(s).

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SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by plaintiffs Hari Krishan Joshi and Yash Pal Joshi, against total 10 defendants.

2. Civil Suit No.CSNo.3261/2013 was filed by plaintiffs seeking declaration that plaintiffs and defendants No.8 to 10 are co-owners in joint possession of land measuring 32 Kanal – 4 Marla, bearing Khasra Nos.19/4-4, 21/1/0-12, 21/2/0-12, 22/1-11, 20/1/0-10, 20/0-10, 18/1-5 Min, 23/1-15 Min, 18/1-3 Min, 23/2 Min, 2/1-17 Min, 4/1-0 Min, 2142/8/3-17, 3/0-16 Min, 2144/9/0-12 Min, 473/5-1 Min, 492/0-11 Min, 634/1/0-5 Min, 1168/0-10 Min, 1205/0-8 Min, 2213/1003/3-5, Kita No.21, situated at Village Bhanoki, Tehsil Phagwara, as per Jamabandi for the year 2007-08.

Declaration was also sought that sale-deeds dated 06.05.2010 and 16.07.2010, executed by defendants No.1 to 5 in favour of defendant No.6, do not create any proprietary and possessory rights in favour of defendant No.6, and are null & void.

Consequential mutations No. 3342 & 3336, sanctioned on the basis of said sale-deeds were also challenged. Consequential relief of

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permanent injunction against defendants No.1 to 7 was also prayed.

3. Pleaded case of the plaintiffs is that ancestors/forefathers of the plaintiffs and defendants No.8 to 10, namely; Khushi Ram Joshi and Shiv Nand Joshi had purchased land in question measuring 32 Kanal – 4 Marla, from Baldev Raj, Ramji Dass, Jagdish Lal and Manohar lal sons of Biru Ram, vide sale-deed dated 24.05.1971 (Ex.P1). After their purchase, mutation No.1930 dated 31.08.1971, as recorded in the Jamabandi for the year 1972 (Ex.P2) was also sanctioned. After the death of Khushi Ram Joshi and Shiv Nand Joshi, said land was succeeded as per their shares by both the plaintiffs and defendants No.8 to 10.

4. In the written statement filed by the defendants, it is categorically pleaded that plaintiffs and defendants No.8 to 10 have no connection with the suit land. Sale-deeds executed by defendants No.1 to 5 in favour of defendant No.6 are perfectly legal and valid. Plaintiffs have got no right and interest in the land sold by defendants No.1 to 5 to defendant No.6. In the written statement, it is also clarified that there is nothing pleaded in the plaint as to how the mutation entries are wrong. It is also clarified that defendant No.6 purchased 12.66 Marlas of land out of specific Khasra Nos. 2213/1003 min (0-15), and 1205 min (0-4), Khata No.120/0248, as per Jamabandi for the year 2007-08, from Jagdish and Manohar Lal vide sale-deed dated 06.05.2010, in the revenue area of village Bhanoki, Tehsil Phagwara, and further purchased 6.25 marlas from Kamla Devi, Neelam Sharma and Jyoti (legal heirs of Ramji Dass), out of khasra Nos. 2213/0013 min (0-15), and 1205 min (0-4), as per Jamabandi for the year 2007-08, vide sale-deed dated 16.07.2010, falling in the revenue estate of village Bhanoki, Tehsil Phagwara. This way, sale-deeds were executed

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qua specific area and accordingly, mutation was entered in favour of defendants No.1 to 6.

5. Taking note of the pleadings and the evidence available on record, Ld. Trial Court perused the Jamabandi for the year 1967-68 (Ex.P3), and found that specific khasra numbers were purchased by the predecessors-in-interest of the plaintiffs, and the total land in Khewat No.82 was measuring 224 Kanal – 3 Marla. Ld. Trial Court found that this way, predecessors-in-interest of the plaintiffs have become co-sharers in the joint land measuring 224 Kanal – 3 Marla to the extent of 32 Kanal – 4 Marla.

6. Taking note of the fact that defendants No.1 to 5 are reflected as co-sharers in the title land measuring 225 Kanal – 8 Marla, Ld. Trial Court observed that they have sold their shares vide sale-deeds dated 06.05.2010 and 16.07.2010 by mentioning specific khasra numbers.

Relying upon the judgment i.e. ***Mange Ram vs. Ram Chand, 2001(2) PLJ 441***, Trial Court held that despite mentioning of the specific portion of the land in the sale-deed(s), such sale would be considered as a sale of the share out of the joint khewat. Trial Court also concluded that predecessors-in-interest of the plaintiffs had also become co-owners in the suit land vide sale-deed dated 24.05.1971, whereas, land in fact, is jointly owned by the shareholders.

Neither there is any pleading nor any evidence to the effect that area sold by vendors of the defendant No.6 is more than their share. It cannot be assumed that the sale-deed was executed by the sellers beyond their share. However, any alienation made by the co-sharers beyond his/their share can be taken care of at the time of partition proceedings only.

7. Observations made by Ld. Trial Court in paragraphs No.11, 12

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& 13, are reproduced as under:-

"11. The perusal of the fard jamabandi for the year 1967-68 which is Ex.P3 shows that specific khasra numbers were purchased by the predecessor-in-interest of the plaintiff and the total land having khewat no.82 was measuring 224 kanals three marlas. Therefore, they became co-shareers in the joint land measuring 224 kanals three marlas to the extent of 32 kanals four marlas.

*12. The plaintiffs have challenged the sale deeds dated 6.5.2010 and 16.7.2010 alleging that defendants nos.1 to 5, had sought to execute the same in favour of defendant no.6. As per jamabandi for the year 2007-08 which is Ex.P10, The defendants no.1 to 5 are reflected as co-sharers in the total land measuring 225 kanals 8 marlas. They have sold their share vide sale deeds dated 6.5.2010 and 16.7.2010 by measuring specific khasra numbers. The sale of specific khasra number is sale of share only as per settled law. Reliance upon this point can be placed upon the case cited as **Mange Ram Versus Ram Chander 2001 (2) PLJ 441** wherein it has been held that sale of specific portion of land described by particular khasra number by a co-owner out of joint khewat would be a sale of share out of joint khewat. As such, if the defendants sell the suit land further in specific portion, it would amount to sale of share only and the subsequent vendee shall come in the shoes of the defendants and the suit land would remain subject to partition. Therefore, no. injury or loss would be caused to the plaintiff by sale of suit land in specific portion by the defendants. There is nothing on record which could prove that the defendant nos.1 to 5 were not co-sharers to the extent of property sold by them vide sale deeds dated 6.5.2010 and 16.7.2010. Therefore, it cannot be said that the sale deeds dated 6.5.2010 and 16.7.2010 are null and void.*

13. As per jamabandi for the year 1967-68 which is Ex.P3, khara no.1205 min contained land measuring 0K-19 marlas whereas khasra nos.2213/1008 contained land measuring six kanals five marlas. The predecessor of plaintiff s did not

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purchase the entire land comprised in khasra no.1205,2213/1008 vide sale deed dated 24.5.1971 but they purchased only 0K-8Marlas from-Khasra no.1205min and three kanals five marlas from khasra nos.2213/1008. In these circumstances, it cannot be said that the entire land mentioned in the sale deeds dated 6.5.2010 and 16.7.2010 executed by defendants nos.1 to 5 in favour of defendant no.6 had already been purchased by the predecessor-in interest of the plaintiffs. It is pertinent to mention that after the purchase of the land vide sale deed dated 24.5.1971, the predecessor-in-interest of the plaintiffs and defendants nos.8 to 10 became co-owners in the suit land which is joint property. If any alienation is made by any co-sharers beyond his share, the same can be taken care of at the time of partition. The plaintiffs having their names reflected in jamabandi for the year 2007-08 as co-owners/co-sharers have remedy available with them to seek partition and if defendant nos.1 to 5 sold more land than their share vide sale deeds in question, the loss would be suffered by the subsequent vendee and the plaintiffs being previous purchasers shall get their land on priority basis. Moreover, it is not the case of the plaintiffs as per the plaint that their share has been reduced. In para no.4 of the plaint, the plaintiffs have mentioned about the wrong entries in the revenue record but the plaintiffs have miserably failed to show and specify as to how the said entries are wrong. No revenue official has been examined by the plaintiffs regarding the alleged wrong entry in the revenue record. Under these circumstances, declaration cannot be granted as it would affect the rights of other co-sharers adversely as the plaintiffs and defendants nos.8 to 10 are only co-sharers in the suit land and are not exclusive owners of khasra numbers vide sale deed dated 24.5.1971."

8. When the plaintiffs filed first appeal, findings given by Ld. Trial Court were reiterated by the Ld. First Appellate Court also, in its judgment in paragraphs No.25 & 26. Resultantly, first appeal was also

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dismissed.

9. Counsel for the plaintiffs (appellants herein) relied upon the judgment of this Court rendered in ***Hardev Singh and ors.* vs. *Raj Kumar and ors.*, 2013(5) RCR(Civil) 186 : Law Finder Doc Id *#382657***, and relies upon paragraphs No.13 & 14 of the same, which says as under:-

> *"13. Defendants no. 3 to 7 or their predecessor Partap Singh cannot be said to be bonafide purchasers of the suit land because judgment and decree dated 2.1.1991 were passed on claim of ownership by adverse possession canvassed by Partap Singh in his said suit. So question of Partap Singh or his successors respondents no. 3 to 7 being bonafide transferees for valuable consideration does not arise. On the other hand, defendants no. 1 and 2 could not transfer land in excess of their share. Consequently, their successors respondents no. 3 to 7 cannot acquire right in land in excess of share of defendants no. 1 and 2.*
>
> *14. Observation of the lower appellate court that excess share can be adjusted out of some other khewat is also vague and untenable. The total joint land measuring 97 kanals 8 marlas comprised of aforesaid four khewats no. 101, 427, 998 and 1224 and therefore, question of adjustment of excess land from some other khewats does not arise. Substantial question of law arising to this effect in the instant second appeal also has to be answered in favour of the plaintiffs."*

He further relies upon the judgment of this Court rendered in ***Mewa Singh* vs. *Baldev Krishan*, 2001(1) RCR(Civil) 70 : Law Finder Doc Id # 14609**, and relies upon paragraphs No.11, 12 & 14 of the same, which says as under:-

> *"11. Baldev Krishanwas co-sharer in the joint land. He had 9/16 share. As such, he could not mortgage the land in favour of the plaintiff in excess of his share. Mewa Singh etc. -appellants are not necessary party to the partition proceedings.*

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12. Section 111 of the Punjab Land Revenue Act, 1887 reads as follows :

> *"Any joint owner of land, or any joint tenant of the tenancy in which a right of occupancy subsists, may apply to Revenue Officer for partition of his share in the land or tenancy, as the case may be, if -*
>
> *(a) at the date of the application the share is recorded under Chapter IV as belonging to him; or*
>
> *(b) his right to the share has been established by a decree which still subsisting at the date; or*
>
> *(c) a written acknowledgment of that right has been executed by all persons interest in the admission or denial thereof."*

xx xxx xx xxx

14. It is cardinal principle of law that a co-sharer in exclusive possession can deal with but not in excess of his share. In this case, Baldev Krishan – defendant created mortgage which was in excess of his share in the joint property. Other co-sharers are not bound by the creation of mortgage in excess of his share by Baldev Krishan."

10. This Court is of the view that the applicability of the same can be considered only, after understanding the facts and circumstances discussed in the initial paragraphs of the cited judgments. By perusing the facts of both the cited judgments, it is found that the pleaded facts are quite different to the one raised in the cited judgments. The basic difference is that admittedly, plaintiffs have neither raised any pleading, nor led any evidence in support of the same that the defendants No.1 to 5 have executed the sale-deed beyond their share. Even, there is nothing with the plaintiffs to deny the fact that defendants No1 to 5 were not having any share in the suit land.

11. Thus, taking note of the factual aspects and the findings given by the Ld. Courts below, I do not find any sound/substantial reasoning to

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deviate from the view taken by the Courts below. Besides, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

For the reasons recorded herein-above, the instant appeal *sans* merits, and thus, **dismissed**. The judgment(s) & decree passed by both the Courts below are hereby affirmed.

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

December 05, 2023
J.Ram

Whether speaking/reasoned: ✓ *Yes/~~No~~*
Whether Reportable: ✓ *Yes/~~No~~*

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