

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

RSA-3319-2017(O&M)

Reserved on :- 12.4.2023

Date of Pronouncement:-17.4.2023

Sukhbir Singh and others

...Appellants

Versus

State of Haryana and others

...Respondents

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

Present: Mr.Rakesh Nehra, Sr.Advocate with
Mr.M.S. Kathuria, Advocate
for the appellants.

H.S. MADAAN, J.

CM-8067-C-2017

For the reasons mentioned in the application, the same is
allowed and delay of 156 days in filing of the present appeal is condoned.

RSA-3319-2017(O&M)

1. Briefly stated, facts of the case are that plaintiffs Sukhbir Singh, Ranbir Singh and Jagbir Singh, all sons of Dhan Singh, residents of Dehri Mohalla, Rohtak had brought a suit against defendants i.e. State of Haryana through Collector, Rohtak, Tehsildar, Rohtak and Om Parkash son of Bharat Singh, resident of Mata Darwaja Gau Karan Road, Rohtak, seeking declaration to the effect that they along with their sisters are owners in possession of 1/4th share in the suit land and entry in the name

of Om Parkash – defendant No.3 regarding 11/48 share of the suit land is incorrect, illegal and the same is liable to be corrected, besides seeking a decree for mandatory injunction directing defendants No.1 and 2 to make necessary correction in the revenue record and documents so as to show the plaintiffs and their sisters to be owners in possession of 1/4th share of the suit land and further to delete the name of defendant No.3. The plaintiffs further craved for a decree for permanent injunction restraining defendant No.3 from alienating any part of the suit land in any manner.

2. As per the case of the plaintiffs, their father Dhan Singh was owner in possession of 1/4 share in the suit land bearing khewat No.2221 Min/2093, Khatoni No.3614/3323, khasra No.1163 total measuring 2 bigha 10 biswas situated at Mouja Rohtak, Tehsil and District Rohtak and it was so reflected in the jamabandi for the year 1997-98; after death of Dhan Singh his estate devolved upon all the three plaintiffs being his sons and Dilbar Devi and Santosh Devi - daughters and mutation No.11272 in that regard was sanctioned in their favour, however, on obtaining copy of jamabandi for the year 2002-03 on 12.10.2010, the plaintiffs were shocked to know that they along with their sisters have been shown owners in possession of 1/8 share only instead of 1/4 share and defendant No.3 has been wrongly shown owner in possession of 11/48 share when defendant No.3 has no concern with the land in question; on making further inquiries, the plaintiffs came to know that an error crept in the revenue record with regard to reflection of name of defendant No.3 as owner in possession of 11/48 share in the suit land.

According to the plaintiffs, neither they nor their father

previously had sold any part of the suit land, therefore there was no question of defendant No.3 becoming owner to the extent of 11/48 share in the suit land; the plaintiffs had contacted Halqa Patwari with a request to make necessary correction in the revenue record but to no effect, giving rise to a cause of action to the plaintiffs to bring the suit for declaration, permanent and mandatory injunction in question.

3. On notice, all the three defendants put in appearance. Defendants No.1 and 2 filed a joint written statement, whereas defendant No.3 came up with a separate written statement.

In the joint written statement submitted by defendants No.1 and 2, they have raised preliminary objections to the effect that the suit is not maintainable in the present form; the suit is bad for non-joinder and misjoinder of necessary parties; the plaintiffs have no locus standi to file the suit; the Civil Court has no jurisdiction to entertain and try the suit; the suit is under valued etc. On merits, the answering defendants contended that defendant No.3 had got sale deed registered in accordance with the provisions of the Registration Act and Rules framed thereunder; the mutation was entered as per information provided by the person concerned and its sanction was subject to verification, however as particulars of the mutation could not be verified, therefore it remained unsanctioned. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

In the separate written statement filed by defendant No.3, he had also taken up various legal objection, on merits contending that the suit land bearing Khasra No.1163 is shamlat land of Thok Jatan of Mouja

Rohtak and Dhan Singh father of the plaintiffs along with Tejpal and Ved Pal sons of Preet Singh and Satbir son of Bharat Singh had sold their share in the land comprised in Khewat No.1417 Khatoni No.2474 to 2479 measuring 2 bighas 14 biswa Pukhta situated at Mouja Rohtak along with their right in the shamlat land i.e. Khasra No.1163 to the answering defendant vide sale deed No.2805 dated 27.6.1990 and the answering defendant was put in actual physical possession of shamlat land bearing Khasra No.1163; thereafter the vendors including Dhan Singh father of the plaintiffs had not been left with any right, title or interest in the suit property. According to the answering defendant, entry in jamabandi showing Dhan Singh to be owner to the extent of 1/8 share in column of cultivation, the same is wrong and result of miscalculation. The answering defendant, who has been in possession of Khasra No.1163 has installed tubewell, constructed a KOTHA and planted fruit trees of various types in northern part of Khasra No.1163; he has been using part of this khasra number for going to and from his agricultural land since the day of purchase. The answering defendant has no other passage leading to his fields except through Khasra No.1163, which abuts sanctioned rasta; there is Government built pucca nala of 5 feet depth with 7 feet width and there is a pucca built culvert over the Nala for proper use of the rasta. This defendant labelled mutation No.11272 with regard to inheritance of Dhan Singh in favour of his children as illegal, null and void contending that even otherwise mutation does not confer any title. According to this defendant the plaintiffs have no right, title or interest in the suit land so the entry in the revenue record showing them to be owners to the extent of

1/8 share is illegal. Refuting the remaining assertions, such defendant also craved for dismissal of the suit.

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

1. Whether the plaintiffs along with their sisters are owners in possession of 1/4 share in the total suit land and entry in the name of defendant No.3 in the revenue record with regard to 11/48 share of the suit land is incorrect and is liable to be corrected accordingly? OPP.
2. Whether mandate is to be issued against defendants No.1 and 2 to make necessary correction in the revenue record? OPP.
3. Whether defendant No.3 is liable to be restrained from alienating the suit property? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Relief.

5. The parties led evidence in support of their respective claims.

6. During the course of their evidence, the plaintiffs have examined Pawan Kumar, Record-keeper as PW1. Plaintiff No.1 Sukhbir Singh got his statement recorded as PW2 besides examining Raj Singh, Halqa Patwari as PW3. The plaintiffs also tendered in evidence certain documents.

In rebuttal the defendants examined Om Parkash as DW1, Balram Saini as DW2 and Partap Singh Saini, Tehsildar, Rohtak as DW3.

They further tendered in evidence sale deed as Ex.DX.

7. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Rohtak by giving issue-wise findings vide judgment and decree dated 25.2.2016 dismissed the suit of the plaintiffs with costs.

8. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Rohtak, which was assigned to Additional District Judge, Rohtak, who vide judgment and decree dated 30.8.2016 dismissed the same by upholding the judgment and decree passed by the trial Court.

9. 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.

10. I have heard learned counsel for the appellants besides going through the record and I find that the appeal is absolutely without merit.

11. Both the Courts below considering the pleadings of the parties, the evidence brought on record by them and in view of the settled legal position, have come to the conclusion that Dhan Singh father of the plaintiffs had purchased 1/8 share in shamlat land comprised in Khasra No.1163 vide sale deed No.3096 dated 26.10.1978 Ex.P1 and in terms of sale deed No.2805 dated 27.6.1990 Ex.P2, he along with Tejpal, Ved Pal and Satbir had sold land comprised in Khewat No.1417 Khatoni No.2474 to 2479 to Om Parkash defendant No.3 for a sum of Rs.80,000/- and this fact had been admitted by plaintiff Sukhbir Singh when he had appeared

as PW2 and was subjected to cross-examination. He had further admitted possession of defendant No.3 over khasra No.1163 as well as installation of tubewell by him therein and raising construction of KOTHA. It has also been rightly taken note of that though the plaintiffs claimed that their father Dhan Singh had not sold any shamlat land to vendee Om Parkash defendant No.3 vide sale deed Ex.P2 but then they had not challenged the said sale deed. A perusal of sale deed Ex.P2 goes to show that the land had been transferred along with right in the shamlat land. The sale deed is a registered document. Although words *Main Haq Shamlat* i.e. along with rights in shamlat are not typed in the same sequence but then there is nothing on record to show that those had been typed and entered later on. Even otherwise, the sale deed being a registered document and a counter part thereof being available in the office of Sub Registrar, Rohtak, if defendant No.3 Om Parkash had made any addition in the recital of the sale deed so as to add words 'along with rights in the shamlat' that would have been clearly exposed by summoning record from the office of General Sub Registrar, Rohtak but that was not done by the plaintiffs. Therefore, it has to be taken that the entire recital had been typed in one go and there is no question of entering any words later on. Dhan Singh during his life time has not challenged the sale deed Ex.P2. Similarly the plaintiffs had not offered specific challenge to that sale deed rather its valid execution had been admitted by the plaintiff Sukhbir Singh while appearing as PW2 in his cross-examination.

12. Under the circumstances, Dhan Singh having sold land along with share in the shamlat land, he was not left with any right or interest in

the shamlat land and on his death the same could not be inherited by his children i.e. the plaintiffs sons and two daughters. Therefore, the plaintiffs were rightly not found entitled to the declaration that they are owners in possession of the suit land and no mandatory injunction was required to be issued to defendants No.1 and 2 to carry out any correction in the revenue record. For the similar reasons, defendant No.3 having been found to be owner in question, no rider can be put upon his rights to deal with it in the manner he feels like including alienating it.

13. 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.

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

15. The appeal stands dismissed with costs accordingly.

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

17.4.2023
Brij

(H.S.MADAAN)
JUDGE

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

Whether reportable : **Yes/No**