

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

RSA-3449-2018(O&M)

Reserved on:-22.3.2023

Date of decision:-28.03.2023

Suraj Bans Singh (since deceased) through LRs

...Appellants

Versus

Pritpal Singh (since deceased) through LRs and others

...Respondents

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

Present: Mr.Kanwaljit Singh, Sr.Advocate with
Mr.Vaibhav Katoch, Advocate
for the appellants.

Mr.H.K. Aurora, Advocate
for respondent No.1 (i to iii).

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Suraj Bans Singh son of Amolak Singh, resident of WC-134, Opposite Civil Hospital, GT Road, Jalandhar (since dead) represented by his LRs had brought a suit against Pritpal Singh and others, seeking a declaration that plaintiff is joint owner and in joint possession to the extent of 5/9 share in the suit property bearing WC 134 situated at GT Road Opposite Civil Hospital, Jalandhar and sale deed dated 3.12.1999 registered on 10.12.1999 executed by defendant No.2 to 8 in favour of defendant No.1 in respect of specific portion measuring 3 marlas in the house in question is illegal, null

and void not binding upon rights of the plaintiff and by way of permanent injunction restraining defendant No.1 from exercising any act of joint possession in respect of the portion of the joint property purchased by him on the basis of impugned sale deed dated 10.12.1999 and from claiming rent from the tenants, namely Raman Kumar and Arun Pathak in respect of shop marked X and Maini Marked Y till the partition in due course and further for declaration that possession of defendant No.1 over the shop Marked 1 is that of trespasser besides seeking possession by ejectment of defendant No.1 out of that shop.

2. As per the version of the plaintiff his father Amolak Singh was the original owner of the suit property, which was in the form of dwelling house; Amolak Singh died intestate in the year 1971; thereafter Sant Kaur, Manmohan Singh, Kuldeep Singh, Harpreet Kaur, Narinder Singh had died leaving behind their respective legal heirs; Davinder Singh and Baljit Singh – sons and Smt.Narinder Kaur daughter of Amolak Singh had sold their 1/9th share each in the suit property in favour of the plaintiff vide sale deeds dated 11.6.1997, 27.8.2001, registered on 27.8.2001, 12.9.2001 and .1.4.2002, respectively, in that way the plaintiff became owner to the extent of 5/9 share in the suit property; the suit property is still joint; 1/9 share belongs to defendants No.9 to 12, LRs of Kuldeep Singh son of Amolak Singh, Harjit Kaur wife of Narinder Singh on her own behalf and as a attorney of Jaswinder Singh son of Rani alias Harpreet Kaur, Micky, Himantika, Rubina and Rajbans Kaur had sold their respective share measuring 3 marlas, which is the property in dispute comprising one shop, room on the backside, chubara passage, courtyard

and staircase along with all rights appurtenant thereto for Rs.12,50,000/- to defendant No.1 Pritpal Singh.

According to the plaintiff, since the whole house was joint of all the LRs of Amolak Singh, therefore defendants No.2 to 8 had no right to sell specific portion to defendant No.1, who was not member of the family of Amolak Singh; defendant No.1 had purchased the alleged specific portion knowing fully well of pre-existing right of the plaintiff over the portion being tenant in shop since days of Amolak Singh; defendant No.1 is not member of the family of Amolak Singh, therefore is not entitled to joint possession with family members of Amolak Singh of any part of the house; however, on account of mala fide intention of defendants No.1 to 8, a cloud has been cast on the legal rights of the plaintiff; defendant No.1 refused to accept the genuine request of plaintiff and to take the sale deed in his favour to be sale of a share and not of specific portion but to no effect, giving rise to a cause of action to the plaintiff to bring the suit in question.

3. On notice, defendants No.1 and 2 appeared and filed a joint written statement, whereas defendants No.3, to 5 and 13 filed a separate filed a separate joint written statement.

In the joint written statement filed on behalf of defendants No.1 to 2, they had raised various legal objections. According to answering defendants, the plaintiff is taking diametrically opposite stand in two different litigations; on one hand, he is stating that defendant No.1 is tenant and on the other hand labelling him as a trespasser; however, once it is admitted that defendant is a co-sharer/co-owner, then the entire

suit of the plaintiff becomes false; the suit had been filed with an ulterior motive to get defendant No.1 ejected from the property in question; the plaintiff had earlier filed a petition under Section 13 of the East Urban Rent Restriction Act claiming relationship of landlord and tenant between the parties, however, his stand in the present suit is entirely different that defendant is a trespasser. The answering defendants contended that defendant No.1 has become co-owner in the property in dispute by purchase of 3/9 share vide sale deed dated 3.12.1999 registered on 10.12.1999, thus answering defendant No.1 is in exclusive possession of the property; earlier he was tenant under Amolak Singh but now he has become co-owner and his title is unquestionable. According to the answering defendants, defendant No.1 has been in possession since last 14 years earlier as a tenant and now as a co-owner; the plaintiff has not asked for partition. Both the defendants prayed for dismissal of the suit.

Defendants No.3 to 5 and 13 had filed separate written statement submitting that property in dispute is not the property described in the title of the plaint as well as in the site plan. They denied that it was ownership of Amolak Singh; the sale deed is alleged to be without consideration contending that defendants had sold the property vide sale deed dated 3.12.1999 which was scribed on 31.12.1999 in favour of defendant No.1 and defendant No.1 was in possession as a tenant in the shop earlier. A prayer for dismissal of the suit was made.

4. The plaintiff 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 plaintiff is entitled for declaration as prayed for? OPP.
 2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
 3. Whether the plaintiff is entitled to the possession of the shop marked 1 as prayed for? OPP.
 4. Whether the present suit is not maintainable? OPD.
 5. Whether the plaintiff has not come to the Court with clean hands? OPD.
 6. Whether the plaintiff is estopped to file the present suit by his own acts and conducts? OPD.
 7. Whether the present suit has been filed with malafide intention? OPD.
 8. Whether the plaintiff is liable to be rejected under the provisions of Order 7 Rule 11 CPC? OPD.
 9. Whether the site plan produced by the plaintiff is wrong? OPD.
 10. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD.
 11. Whether the plaintiff has no locus standi to file the present suit? OPD.
 12. Relief.
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5. The parties led evidence in support of their respective claims.
 6. After hearing learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Jalandhar gave issue-wise findings inasmuch as issue No.1 was decided partly in favour of the plaintiff and against the defendants holding that plaintiffs are joint owners in joint possession to

the extent of 5/9 share in the suit property. However, the relief regarding another two declarations sought by the plaintiff was declined. Issues No.2 and 3 were decided against the plaintiffs and in favour of the defendants. Issues No.4 to 11 were decided against the defendants and in favour of the plaintiffs. As a result of finding on the issues No.1 to 11, the suit of the plaintiff was partly decreed with cost and plaintiff was declared a joint owner in joint possession to the extent of 5/9 share in the suit property. This was so done vide judgment and decree dated 31.3.2014

7. Feeling aggrieved by the said judgment and decree, the LRs of deceased plaintiff had filed an appeal in the Court of District Judge, Jalandhar, which was assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 27.9.2017 dismissed the same.

8. Still feeling dissatisfied, the LRs of plaintiff 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 his suit be decreed.

9. Notice of the appeal was issued to the respondent No.1 only, who had expired and now is being represented through his LRs. They appeared through counsel.

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

11. The first and foremost thing to be seen in this case is whether the plaintiff has a preferential right to purchase the share in the property sold by other co-sharers to defendant No.1. For ready reference, Section 22 of the Hindu Succession Act is being reproduced as under:

Section 22 in The Hindu Succession Act, 1956

22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred. Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

12. Learned counsel for the appellants has referred to judgment by the Apex Court i.e. **Babu Ram Versus Santokh Singh (deceased) through his LRs and others**, Civil Appeal No.2553 of 2019 arising out of SLP(Civil) No.31039 of 2018 decided on 7.3.2019 wherein it was observed that preferential right given to an heir of a Hindu under Section 22 of the Act is applicable even if the property in question is an agricultural land.

Thus it is to be taken that plaintiff had preferential right to acquire the shares sold by other co-sharers in the suit property to defendant No.1.

13. Now the next question arises as to within how much time he could have filed the suit asserting his such superior right. According to

learned counsel for the appellants/plaintiffs such limitation was 3 years as provided under the Limitation Act for filing a suit for declaration.

14. Whereas learned counsel for the respondents has submitted that such limitation is one year in terms of Article 97 of the Limitation Act. In support of his such contentions, he has referred to two judgments by the Apex Court first being **Raghunath (D) by LRs Versus Radha Mohan (D) thr. LRs and Ors., Civil Appeal No.1442 of 2016** wherein limitation was held to be one year and a similar view was taken in other judgment **Ashutosh Chaturvedi Versus Prano Devi @ Parani Devi & Ors., Appeal (Civil) 2893 of 2008** decided on 22.4.2008.

15. Although the first judgment of Raghunath case(supra) is under Rajasthan Pre-Emption Act, 1966 but the second judgment of Ashutosh Chaturvedi's case (supra) is with regard to exercise of right under Section 22 of Hindu Succession Act. Therefore, it comes out that the limitation is to be taken as one year from the date of execution of the registered sale deed in favour of defendant No.1. The sale deed being challenged by the plaintiff is dated 3.12.1999 registered on 10.12.1999 executed by defendants No.2 to 8 in favour of defendant No.1. The suit was filed on 13.11.2002 much after a period of one year from the date of execution/registration of the impugned sale deed. Therefore, the suit is clearly time barred and claim of the plaintiff for declaration of the impugned sale deed dated 3.12.1999 registered on 10.12.1999 as illegal, null and void ineffective qua rights of the plaintiff was rightly rejected.

16. As a result of this sale deed, defendant No.1 had become co-sharer in the suit property, therefore, the plaintiff could not get a

declaration that possession of defendant No.1 over the shop marked 1 was that of trespasser.

17. Now the question arises as to what is the nature of possession of defendant No.1. Admittedly, he had been in possession of the shop in question as a tenant prior to purchasing a share in the suit property from defendants No.2 to 8 vide the impugned sale deed. Now it is to be seen as to whether as a result of this sale deed his status changed to be that of a co-sharer or remained that of a tenant. Although learned Additional District Judge, Jalandhar has observed that on account of the impugned sale deed, the nature of possession of defendant No.1 changed to be that of the co-sharer/joint owner but such observation is contrary to the settled legal position.

18. Learned counsel for the appellants has referred to various judgments in that regard first being **Koshla Ice & General Mills and another Versus Padma Wati now deceased & through LR Hari Gopal and others** passed by a Co-ordinate Bench of this Court in CR No.3412 of 2017 decided on 13.11.2018. In the said order/judgment, dealing with similar position, it was observed that when the tenant had purchased share from some co-owner improving his status from tenant to that of co-owner, the entire title had not come to such tenant, rather he had acquired partial ownership and full tenancy rights. Therefore, it cannot be said that the interest of lessee/tenant and lessor in the whole property had vested in the tenant at the same time and in same right. It was further observed that tenancy cannot be extinguished by merger unless and until the entire ownership rights get vested in the tenant. While making these

observations Section 116 of the Evidence Act was referred to which provides that a tenant cannot deny the ownership of the landlord by whom he was inducted and such rule of estoppel continues to operate between the landlord and the tenant so long as the tenancy continues and is terminated in accordance with law. It was further observed that in terms of Section 11 of the Transfer of Property Act, doctrine of merger cannot apply unless and until entire interest of the lessor stands acquired by the lessee and there has to be a complete union of whole interest.

19. In an other judgment referred to by learned counsel for the appellants i.e. **National Flour Mills Pvt. Ltd. and others Versus Ram Sarup, 2012(60) RCR(Civil)487** by a Single Judge of this Court where under similar circumstances, it was observed that a tenant without surrendering possession of the property to his own landlord will be estopped from contending by operation of Section 116 of the Indian Evidence Act that he had acquired larger right and therefore, he cannot be evicted. It was further observed that , it is the duty of the tenant to surrender possession and work out his right for partition of his share on the basis of ownership claim.

20. For the similar reasons, the plaintiff could not seek possession by way of ejectment of defendant No.1 out of share marked 1 by treating him to be trespasser.

21. The trial Court had rightly granted a declaration to the plaintiff that he is owner to the extent of 5/9 share, whereas declining the other reliefs. Learned Additional District Judge, Jalandhar had affirmed such judgment and decree passed by the trial Court.

22. I conclude that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. 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.

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

24. The appeal stands dismissed with costs accordingly.

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

28.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No