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

**RSA-3978-2017 (O&M)
Date of Decision: 18.05.2023**

Amarjit Kaur and others

..... Appellants

Versus

Bhupinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rakesh Gupta, Advocate,
for the appellants.

Mr. S.S.Salar, Advocate,
for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

The present appeal has been filed by the defendants of the original suit challenging the judgment and decree dated 12.07.2017 passed by the lower Appellate Court, whereby the judgment and decree dated 07.03.2015 passed by the Trial Court has been upheld and the respondents/plaintiffs have been held entitled to the joint possession declaring them to be the owner of 120/10080 share; in Khewat No.433/379 min. in the total area of land measuring 25 bighas 4 biswas situated in the revenue estate of village Mangwal, Tehsil and District Sangrur, as per jamabandi for the year 2005-2006.

The brief facts, as involved in the present case, are that the predecessor-in-interest of defendant, namely, Assa Singh has executed a sale

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deed dated 03.12.1990 in favour of the plaintiffs qua the land measuring 12 biswas in specific killa number bearing Khasra No.116//120(0-12) out of joint khewat measuring 19 bighas 15 biswas. The said aspect was reflected in the jamabandi for the year 1991. The predecessor-in-interest of the other defendants, namely, Harchand Singh, was also joint owner in the entire holding with Assa Singh to the extent of half share. Although after the land was purchased by the plaintiffs, even the mutation was sanctioned in their favour, however, Harchand Singh questioned before the revenue authorities that mutation entry in favour of the plaintiffs. It was pleaded by him that out of joint holding, the co-sharer Assa Singh could not have sold specific khasra number, rather; he could have sold only his share in entire joint holding. Accordingly, the District Collector, Sangrur, passed an order dated 12.09.1992 that the sale in favour of the plaintiffs shall be taken to be the sale only of share in the holding of Assa Singh, which was then joint with Harchand Singh. However, while making entries after order of the District Collector; the revenue authorities made incorrect entries; showing the share of the plaintiffs to be only to the extent of 1/2 share in Khasra No.116//120 (12 biswas). Therefore, effectively, the area shown in the name of the plaintiffs was reduced to the extent of 50%. Subsequently, partition had taken place between Harchand Singh and the legal heirs of Assa Singh. At that stage, the plaintiffs were deprived of their due shares. Hence, they questioned the entries made in the revenue record and sought a declaration to be the owner to the extent of 12 biswas and claimed joint possession to

that extent in the estate left behind by Assa Singh.

Finding substance in the evidence led and the arguments raised by the plaintiffs, the trial Court had decreed the suit in favour of the plaintiffs. Aggrieved against the same, the defendants of the suit, who are the legal heirs of Assa Singh, filed an appeal before the lower Appellate Court. However, even that appeal has been dismissed. Hence, the present appeal has been filed by the defendants of the original suit.

Arguing the case, learned counsel for the appellants has submitted that both the Courts below have gone wrong in law in holding the plaintiffs to be the joint share holders in the entire holding left behind by Assa Singh. The plaintiffs were recorded owner to the extent of 1/2 share in Khasra No.116//120. Although, the purchase by plaintiffs was ordered to be the purchase of only share, yet the share of the plaintiffs was rightly restricted to the share in Khasra No.116//120. The plaintiffs have no right to claim any share in other land left behind by Assa Singh. However, both the Courts below have wrongly rejected the contention raised by the the appellants.

It is not even in dispute that the plaintiffs had purchased 12 biswas of land from Assa Singh. It is also not even in dispute that after the order of the District Collector, Sangrur, the land purchased by the plaintiffs was declared to be the purchase of share only, out of the share of Assa Singh in the holding which was then joint with Harchand Singh; and not in a particular Khasra No.116//120. The total area of Khasra No.116//120 was

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only 12 biswas. In that 12 biswas as well, Harchand Singh was declared to be owner to the extent of 50% by order of the District Collector; being the joint owner. Therefore, it is obvious that remaining 50% of the share of the plaintiffs, which they lost in Khasra No.116//120 due to order of the District Collector, was required to be compensated out of the share of Assa Singh in other killa numbers left behind by him. Since the dependents of Assa Singh and Harchand Singh had partitioned the properties between them and a new Khewat No.433 was created in favour of the legal heirs of Assa Singh, therefore, the plaintiffs are duly entitled to be compensated qua their share which was purchased by them from Assa Singh. The plaintiffs are entitled to 12 biswas of land, by any means, out of the estate left behind by Assa Singh. The Courts below have done only that much. The argument raised by the appellants/defendants that in the newly created khewat, some properties, other than coming from Assa Singh; have also been included and therefore, the plaintiffs could not have been made co-sharers in the entire khewat created qua estate of Assa Singh; have duly been considered by the Courts below and it has been found that the said extra land has also come only on account of some settlement relating to the estate of Assa Singh himself. Therefore, even this argument of the appellants/defendants can also not be sustained. Hence, this Court does not find any illegality or perversity in the findings recorded by the Courts below.

Moreover, it is settled law that the concurrent findings recorded by both the Courts below are not to be easily interfered as a matter of course;

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only because a different opinion is possible to be framed by re-appreciation of the evidence led on file. No specific question of law arises in the present appeal, nor has any such preposition of law been argued by the learned counsel for the appellants/defendants.

In view of the above, finding no merit in the present appeal, the same is dismissed.

Since, the main appeal has been dismissed, therefore, the pending miscellaneous application(s), if any, stands disposed of; as such.

18.05.2023
adhikari

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No