

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

CR-6043-2022 (O&M)

Date of decision: 20.02.2023

Chattar Singh

...Petitioner(s)

Vs.

Sardeere & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Sudhir Aggarwal, Advocate for the petitioner.

NIDHI GUPTA, J.

CM-3080-CII-2023

This Court, vide order dated 23.01.2023, directed the petitioner to place on record judgment dated 11.01.2002 passed by learned Civil Judge, Jhajjar in Civil suit No. 197 of 1994; judgment dated 29.04.2006 passed by learned Additional District Judge, Jhajjar in Civil Appeal No. 96 of 2002; and also to inform regarding status of Civil Suit No.16 dated 24.08.2011 filed by Puranmal (proforma respondent No.6) against the contesting respondents No.1 to 5 herein.

In compliance thereto, the petitioner has filed present application under Section 151 CPC for placing on record copies of the said judgments dated 11.01.2002 (Annexure P6), 29.04.2006 (Annexure P7) and order dated 01.03.2018 (Annexure P8) passed in Civil Suit No.16 dated 24.08.2011, and seeking exemption from filing certified copies of the same.

After going through the contents of the application, the same is allowed subject to all just exceptions; and Annexure P6, Annexure P7, and Annexure P8 are taken on record.

MAIN CASE

Present Revision Petition has been filed seeking setting aside of order dated 05.11.2022 (Annexure P5) whereby learned Executing Court has accepted objections filed by respondents No.1 to 5, and dismissed the Execution Petition filed by the petitioner.

2. Brief facts of the case are that the petitioner had filed a Suit for specific performance being Civil suit No. 197 of 1994, against Om Prakash – defendant No. 1 therein, Ashwani Kumar - defendant No.2 therein, and Puranmal – defendant No.3 therein/proforma respondent No.6 herein, inter alia, pleading that one Jagan Nath was in possession over the suit land where he (Jagan Nath) had constructed his house and after his death Kishori Lal, his adopted son remained in possession and thereafter, Om Prakash succeeded the suit land. Om Prakash through his General Power of Attorney i.e. Ashwani Kumar executed an agreement dated 27.07.1991 with the petitioner that shops will be constructed on the land from the funds provided by the petitioner and in pursuance to that, the petitioner will become owner to the extent of 1/3rd share. Vide judgment dated 11.01.2002 (Annexure P6), Suit of the petitioner was dismissed by learned trial Court. Petitioner filed appeal against judgment dated 11.01.2002 which was partly decreed vide judgment and decree dated 29.04.2006 (Annexure P7) holding thereby that the

petitioner is entitled to recover the amount paid by him from the defendants No.1 and 2. Said judgment and decree dated 29.04.2006 was challenged before this Hon'ble Court in RSA No.2522 of 2006 which was disposed of vide order dated 04.05.2015 (Annexure P1) in terms of the compromise deed dated 06.02.2015 entered into between the petitioner and Puranmal/proforma respondent No.6 herein. It was noticed in said order dated 04.05.2015 that the defendants No.1 and 2 had transferred their rights in the suit property in favour of Puranmal, and as per abovesaid compromise between the petitioner and Puranmal it was agreed between the parties that petitioner will be entitled to $1/4^{\text{th}}$ share in the suit property and Puranmal respondent No.6 will be owner of remaining $3/4^{\text{th}}$ share.

3. Thereafter, the petitioner filed a Suit for possession by way of partition against respondent No.6 before learned Civil Judge (Senior Division), Jhajjar whereby he sought $1/4^{\text{th}}$ share in the suit property as per compromise decree dated 04.05.2015. Vide judgment and decree dated 12.12.2015 (Annexure P2) learned Civil Judge (Senior Division), Jhajjar decreed the Suit, as per compromise and as per site plan vide which the parties had mutually divided their share.

4. Thereafter, the petitioner filed present Execution Petition for execution of decree dated 12.12.2015, to which respondents No.1 to 5 filed objections (Annexure P3) under Section 47 of CPC stating that the suit land is property of Samlat Pana Chajjiyan of village Beri Khaas, and the objectors are proprietors, and therefore, co-sharer in suit land. It was further stated that the decree under execution was

obtained by the petitioner by concealing material facts and committing fraud. The petitioner filed reply to the objections (Annexure P4). Vide impugned order dated 05.11.2022, objections filed by respondents No.1 to 5 have been accepted and petitioner's Execution Petition has been dismissed. Hence, present Revision Petition.

5. It is submitted by learned counsel for the petitioner that no evidence was brought on record by objectors/respondents No.1 to 5 to show that they are proprietors of Pana Chajjiyan. It is further submitted that petitioner's right to 1/4th share emanated from compromise between the petitioner and respondent No.6, as also from the judgment and decree dated 12.12.2015 whereby the petitioner was held to be owner to the extent of 1/4th share in the suit property. It is submitted that accordingly, the impugned order cannot be sustained as learned Executing Court cannot go beyond the decree.

6. No other argument is raised on behalf of the petitioner.

7. I have heard learned counsel for the petitioner.

8. A perusal of record of the case shows that the petitioner had initially filed a Civil Suit No.197 of 1994 for specific performance of agreement dated 27.07.1991 entered into between the petitioner and Ashwani Kumar, General Power of Attorney holder of Om Prakash. As already noticed above, in the said Suit, Om Prakash was defendant No.1, Ashwani Kumar was defendant No.2 and Puranmal was defendant No.3. Right of defendants No.1 and 2 in the suit property was

stated to have devolved from one Jagan Nath, in respect of which the learned trial Court vide judgment dated 11.01.2002 (P-6) returned the following findings:-

“Thus, in view of my aforesaid discussions, it becomes crystal clear that the plaintiff has failed to prove the ownership of the said Jagan Nath or his successors namely the defendants No.1 and 2 over the suit property, that the plaintiff has also failed to prove that he had ever remained in possession over the disputed site at any point of time in pursuance of the agreement to sell in question, that the defendants No.1 and 2 being not the owners of the disputed site had not right/were not competent to sell away the suit land by dint of impugned agreement to sell dated 27.7.1991, that the plaintiff has failed to prove that he had always been ready and willing to perform his part of contract and that the impugned agreement to sell dated 27.7.1991 being vague, not acted upon and not proved is just a waste paper in the eyes of law and as such, is not worthy of being enforceable. Accordingly, both these issues are hereby decided against the plaintiff and in favour of the defendants.”

9. Learned trial Court further held that as per *“Jamabandi for the year 1994-95 wherein the defendant No.3 Puran Mal along with other co-owners namely Piare, Surta and Partap has been shown to be owner in cultivating possession of the suit land to the extent of 3/4th share, in the capacity of proprietors of the village i.e. HAQDARAN*

SHAMLAT.”(emphasis supplied). As petitioner led no evidence in rebuttal against the said Jamabandi (Exhibit DF), therefore, learned trial Court held that Puranmal acquired exclusive possession of suit land on 03.01.1994 being co-sharer in the land of Panna Chhajjiyan. With the above findings, the suit of petitioner was dismissed.

10. As noted above, the petitioner filed Civil Appeal No.96 of 2002/2005 against the above said judgment, in which learned lower Appellate Court vide Judgment and decree dated 29.4.2006 (P-7), returned the findings as follows:-

“21. Now, the next question comes as to whether this agreement is executable or not. If the agreement is made without any competence of the parties, the same is not executable. It is the duty of the plaintiff to prove this fact. As stated above, the land in question is Shamlat land of Pana Chhachhayan, which is evident from the copy of Jamabandi Ex.DA to Ex.DE for the years 1994-95, 1989-90, 1984-85, 1979-80 and 1974-1975. It is also settled principle of law that the entries in the Jamabandi carries the presumption of truth until and unless same are rebutted by any cogent evidence. As is rightly contended by learned counsel for the defendants that the plaintiff has failed to produce even an iota of evidence barring his oral and bald statement as PW8. PW8 in his cross-examination has admitted that the land in question is owned by Shamlat Pana Chhachhayan.”

11. Thus, it was admitted by the petitioner/plaintiff before the lower Appellate Court that the suit land is owned by Shamlat Pana Chajjiyan.

Learned lower Appellate Court further found that:

“24. I agree with the findings made by the Id. Lower court. The plaintiff has failed to prove the ownership of Jagan Nath or his successors namely defendant no. 1 and 2 over the suit land. He has also failed to prove that the defendant ever remained in possession over the suit land at any point of time. The defendants no. 1 and 2 were not competent to deal with the suit property. But however, from affidavit Ex. PW8/B it is proved that Ashwani Kumar had taken a sum of Rs. 1,25,000/- from the plaintiff under this agreement. Even the receipt of one lac is admitted. Thus, in the alternative relief, the suit of the plaintiff is decreed to the extent that the plaintiff is entitled to recover the said amount i.e. Rs.1,25,000/- from the defendants no. 1 and 2. ...”

12. Second appeal filed by the petitioner before this Court was disposed of vide order dated 04.05.2015 (Annexure P-1), and the same is reproduced hereinbelow:-

*“RSA No.2522 of 2006 (O&M)
Date of decision: 4.5.2015*

Chhattar Singh

..... Appellant

Versus

Om Parkash and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ...

Present: Mr. ..., Advocate, for the appellant.

Mr. ..., Advocate, for respondent No.3.

..., J

Learned counsel for the appellant submitted that as respondents No.1 and 2 had transferred their rights in favour of respondent No.3, they are no more the contesting parties, otherwise also they were proceeded against ex-parte even before the court below.

Learned counsel for the parties submitted that the matter in dispute has been compromised between the appellant and respondent No.3. A copy of the compromise deed dated 6.2.2015 has been placed on record as Annexure R-1 with CM No.1533-C of 2015.

The appellant as well as respondent No.3 are present in person in Court. Their statements have been recorded separately. They have produced their identity cards and have been identified by their counsels as well.

Considering the aforesaid development between the parties, learned counsel for the appellant submitted that the present appeal may be disposed of in view of the compromise deed dated 6.2.2015.

Ordered accordingly.

The impugned judgment and decree of the court below is modified accordingly. The compromise deed shall form part of the decree.

**(...)
JUDGE**

4.5.2015
....."

13. Thereafter, the petitioner filed present Civil Suit No.147 of 2015 against Puranmal - respondent No.6 herein for possession by way of partition, which was disposed of vide judgment and decree dated 12.12.2015 (P-2), in accordance with compromise deed dated 06.2.2015 (Exhibit C1) read with site plan (Exhibit C2). The parties mutually divided actual physical possession of the property in question,

on different portions as depicted in the compromise (Exhibit C1) and as detailed in site plan (Exhibit C2).

14. Thus, the undisputed composite facts that emerge from the above narration are that petitioner claims title in suit land from Puranmal, who got it from Om Prakash and Ashwani Kumar. However, in actual fact, as per the findings of the learned Courts below in judgments dated 11.01.2002 and 29.04.2006 (which have attained finality), Om Prakash and Ashwani Kumar had no title in the suit property as it was found that Jagan Nath or his successors Om Prakash and Ashwani Kumar could not be proved to be owners of the suit property. It was further found that the *“the land in question is Shamlat land of Pana Chhachhayan”*. Thus, in actual fact, the objectors/respondents No.1 to 5 herein who are proprietors of shamlat land of Pana Chajjiyan of village Beri Khaas are joint owners-in-possession of the suit property; and therefore, Puranmal, had no title to transfer to the petitioner.

15. It was submitted by the objectors in their objections before the learned Executing Court that nine shops were constructed in shamlat land of Pana Chajjiyan of village Beri Khaas and Om Prakash and his General Power of Attorney Ashwani Kumar had illegally and without any authority executed a false agreement dated 27.07.1991 for sale of the suit property in favour of the petitioner.

16. As already noticed above, Civil Suit for specific performance filed by the petitioner was dismissed; also the appeal filed by him there-against was partly allowed by learned lower Appellate Court

on 29.04.2006 by holding that Om Prakash and Ashwani Kumar were not owners of the suit land and did not have any authority to alienate the said land.

17. It is therefore, clear that the petitioner and Puranmal were declared owners-in-possession to the extent of 1/4th and 3/4th share respectively on basis of a collusive compromise filed by them before this Court; and without apprising this Court of the fact that khasra No.98/35 measuring 3 kanal is the property of shamlat land of Pana Chajjiyan of village Beri Khaas; and that there are numerous co-sharers/proprietors of this land.

18. It is also on record that despite these facts, which are in the knowledge of both the petitioner, respondents No.1 to 5 were not made party to the present Civil Suit No.147 of 2015 filed by the petitioner for possession by way of partition against Puranmal.

19. It has been submitted by the petitioner and respondent No.6 before this Court in RSA No.2522 of 2006 that Om Prakash and Ashwani Kumar had transferred their rights in favour of Puranmal. However, it has been established on record that Om Prakash and Ashwani Kumar *“were not competent to deal with the property in question therefore they had no title to transfer to Puranmal”*. It is also established on record that as per revenue record Jamabandi Exhibit DA to Exhibit DE for the period 1974-75 till 1994-75, Pana Chajjiyan is reflected as the owner of suit property.

20. Furthermore, it has also come on record that Purnamal had also filed a Suit bearing CS No.16 dated 24.08.2011 for permanent injunction against respondents No.1 to 5 herein in respect of the same suit property bearing khasra No.98/35 wherein too he had alleged that he is proprietor of Pana Chajjiyan and is in exclusive possession of the suit land as co-sharer. From the record it is clear that Purnamal has not disclosed pendency of said suit for permanent injunction before this Court in RSA No.2522 of 2006 disposed of vide order dated 04.05.2015. It however, transpires that ultimately this Civil Suit was dismissed as withdrawn vide order dated 01.03.2018 passed by learned Chief Judicial Magistrate-cum-Additional Civil Judge (Senior Division), Jhajjar (Annexure P8).

21. Learned counsel for the petitioner is unable to controvert any of these findings on record. Accordingly, present Revision Petition stands dismissed.

22. Pending application(s) if any also stand(s) disposed of.

20.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No