



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

CR-2913-2023
Date of decision : 30.07.2024

Gurtej Singh Petitioner

versus

Gurjant Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mahesh Kumar Singla, Advocate and
Mrs. Shikha Singla, Advocate
for the petitioner.

Mr. J.S. Bhindar, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in revision aggrieved of the order dated 20.03.2023, whereby the plaintiff has been ordered to make up the deficient court fee on the application filed by defendants seeking rejection of the plaint under Order 7 Rule 11 on the ground that the court fee required to be paid was advalorem.

2. Plaintiffs filed suit seeking following prayers:-

“Suit for declaration to the effect that the land measuring 297 Kanals 18 Marlas bearing Khewat no. 78, Khatauni no. 173 to 180, Khasra no. 73//1/35(1-13), 67(1-9), 68(1-3), 100(0-13), 135(0-6), 150(0-3), 18//18/2(1-19), 19/1(0-10), 22/1(2-0), 23/1(4-4), 24//3/1 min(3-4), 4(8-0), 7 min(2-0), 8 min(6-0), 9/1(3-8), 42//1/2(7-3), 2/1(7-11), 3/1 min(3-12) 8(8-0), 10/1(8-0), 11(8-0), 12(8-0), 9(8-0), 49/11/2 (7-16), 12(8-0), 13(8-0), 14(8-0), 18(8-0), 19(8-0)



20(8-0), 212 min(2-0), 22(8-0), 23(8-0), 42//3/2 min(3-19), 6/2 min(3-12), 4/1 min(4-0), 14(8-0), 15/1(7-12), 48//15 min(5-0), 16 min(2-0), 25/1 min(0-16), 24//2/2 min(1-9), 8 min(7-0), 48//15 min(3-0), 16 min(2-0), 22//2/1(0-0), 42//4/1 min(3-11), 7(8-0) 48//14 min(6-10), 17 min(2-0), 8/1 min(3-0), 23/2(1-16), 24/2(0-16), 48//13/2 (3-8), 14 min(1-10), 17 min(2-0), 24/2(1-0), 25/1(1-0), 18/22/2 min(1-8), 23/1(0-12), 24//2/2(1-19), 7 min(6-0), 48//1 min(4-0), 17 min(4-0), 18/1(3-3), 42//5/1(7-4), 6/2(4-0), 49//21 min(6-0), 24//3/2(4-16), 42//13(8-0) situated at village Khanpur Fakiran as per Jamabandi for the year 1985-86, out of above mentioned land Nand Singh son of Basawa Singh is/was the owner of land measuring 96 Kanals 11 Marlas, bearing Khasra no. 18//18/2(1-19), 19/1(0-10), 22/2(3-8), 23/1(4-16), 24/2/2(3-8), 3(8-0), 4(8-0), 7(8-0), 8(8-0), 9/1(3-8), 48//13/2(3-8), 14(8-0), 15(8-0), 16(8-0), 48//17(8-0), 19/1(6-6), 22/2/1(0-0), 23/2(1-16), 24/2(1-16), 25/1(1-16) which was under the ownership of Sabbi widow of Wazir Singh at the relevant time in the year 1958, being sole eligible heir of Sabbi widow of Wazir Singh, as per the provisions of Hindu Succession Act and out of above mentioned land measuring 297 Kanals 18 Marlas, the remaining land measuring 201 Kanals 07 Marlas which was joint land of co-sharers namely Jai Kaur widow of Baggu to the extent of 1/3 share, Bharpur Singh, Gurcharan Singh sons of Pakhar Singh to the extent of 1/3 share and Nand Singh son of Basawa Singh to the extent of 1/3 share and in this land measuring 201 Kanals 7 Marlas Nand Singh son of Basawa Singh was also become owner of share of Jai Kaur widow of Baggu Singh being



her sole eligible heir as per the provisions of Hindu succession act and in this way Nand Singh son of Basawa Singh had become owner in the said land measuring 201 Kanals 7 Marlas to the extent of 2/3 share and accordingly mutation no. 1408 dated 13.9.1958, vide which inheritance of Sabbi widow of Wazira has been wrongly entered and sanctioned in favour of Jai Kaur widow of Baggu to the extent of 1/3 share, Bharpur Singh, Gurcharan Singh sons of Pakhar Singh to the extent of 1/3 share and Nand Singh son of Basawa Singh to the extent of 1/3 share out of the land owned by Sabbi measuring 96 Kanals 11 Marlas whereas Nand Singh son of Basawa Singh was the only legal heir of Sabbi and similarly mutation no. 1629 dated 15.7.1970 vide which inheritance of Smt. Jai Kaur widow of Baggu has been wrongly entered and sanctioned in favour of Bharpur Singh, Gurcharan Singh sons of Pakhar Singh and Smt. Ghoto and Dalip Kaur daughter of Pakhar Singh to the extent of 1/2 share and Nand Singh son of Basawa Singh to the extent of 1/2 share out of the share of Jai Kaur widow of Baggu whereas Nand Singh son of Basawa Singh was the only eligible heir of Jai Kaur widow of Baggu Singh and the above mentioned both the mutations are liable to be set aside being contrary to the provisions of Hindu succession Act and all the consequential and subsequent proceedings carried out by Bharpur Singh, Gurcharan Singh sons of Pakhar Singh (now deceased) including the partition proceedings, mutations, exchanges of land, transfer of ownership deeds, sale deeds etc. brought into existence on the basis of wrong entries of ownership in the revenue records are patently wrong and illegal, null and void,



against the provisions of law, non-est without any right and authority, un-sustainable being contrary to the provisions of Hindu Succession Act and have no effect on the rights and of plaintiffs and their predecessors and

B) Suit for declaration as well as Joint possession to the effect that the plaintiffs and performa defendants no. 23 and 24 are owners in possession to the extent of 2307-4/5/5958 share out of land measuring 297 Kanals 18 Marlas, which was initially inherited by Nand Singh son of Basawa Singh from Sabbi and Jai Kaur and thereafter Naib Singh from Nand Singh and now by plaintiffs and Performa defendants from their father Naib Singh being his eligible and legal heirs.

C) Suit for permanent injunction to the effect that the defendants no. 1 to 13 be restrained from transferring or alienating in any manner, any share or portion out of the suit land detailed in the head note (A) of the plaint, illegally, wrongly and forcibly and on the basis of wrong revenue records.”

3. The case pleaded by the plaintiffs is that one Jita had three sons namely Bhupa, Dailu and Kharak Singh. Kharak Singh died without any heir. His share reverted to Bhupa and Dailu, who thus succeeded estate of Jita to the extent of 1/2 share each. Bhupa had one son namely Wazira who was married to Sabbi, but was issue less. Meaning thereby, Wazira was succeeded by his wife Sabbi who died in the year 1958 after the Succession Act, 1956 came into force. Dailu had one son namely Basawa. Basawa had three sons namely Babbu, Pakhar and Nand Singh. Pakhar had two sons namely Bharpur Singh and Gurcharan Singh and Baggu was married to Jai Kaur. Baggu and



Pakhar both predeceased Sabbi. Jai Kaur died on 28.12.1969. Thus, Baggu and Pakhar predeceased Jai Kaur as well. However during the consolidation, estate of Sabbi was mutated in the name of Jai Kaur, Bharpur Singh, Gurcharan Singh and Nand Singh to the extent of 1/3rd of each. In sum and substance, the successor-in-interest of Nand Singh are claiming estate of Sabbi on the ground that Bharpur Singh and Pakhar having predeceased Sabbi. It is only Nand Singh who could have succeeded to the estate of Sabbi.

4. Counsel for the petitioner while assailing the impugned order submits that the collusive decrees *inter se*, transfer deeds and the sale deeds are not binding on the rights of Nand Singh and thus plaintiffs are not required to pay advalorem court fee. Trial Court erred in law and totally misread the dictum of law laid down by the Apex Court in the case of Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. 2010 AIR (Supreme Court) 2807.

5. *Per contra*, counsel for the respondents however submits that the sale deeds are under challenge and the same cannot be avoided by the plaintiffs and thus they are required to pay advalorem court fee and thus no fault can be found with the order passed by the Trial Court.

6. Having heard counsel for both the parties and with their consent, present revision petition is disposed off with the directions to the Trial Court to frame specific issue with respect to valuation of the suit and to decide the same at the time of final decision after being alive to the issue as to whether the collusive decree, transfer deeds and sale deeds can be avoided by the successor of Nand Singh or not.

Consequently, impugned order dated 20.03.2023 shall stand modified to



the aforesaid extent.

7. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

30.07.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No