



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1677-2014 (O&M)

Date of decision: 05.08.2025

Jujhar Singh (since deceased) through His LRs

...Appellant(s)

Vs.

Swaran Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. K.S.Dadwal, Advocate with
Ms. Neha Jain, Advocate for the appellant.

Mr. Sunil Agnihotri, Advocate for the respondent.

NIDHI GUPTA, J.

CM-15369-C-2017

Prayer in the present application under Order 1 Rule 10 of CPC is to implead the applicant Tejinder Kaur as respondent No. 2.

It is admitted by learned counsel for the applicant that RSA-1914-2022 titled as "Tejinder Kaur vs. Swaran Singh and others" filed by the applicant, is already pending consideration before this Court. Furthermore, the applicant was not a party in proceedings before the learned Courts below.

Dismissed as not pressed.

RSA-1677-2014 (O&M)

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below;



whereby the suit filed by the appellant for declaration, has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiff had filed the present suit seeking declaration to the effect that *"the plaintiff is joint owner in joint possession to the extent of 7 Kanals 4½ marlas with measurement of 1 Karam = 57½" being the equal area of 5 Kanals 10 marlas with measurement 1 Karam = 66 " qua share of Balkishan son of Joga Singh and purchased by the plaintiff vide registered Sale Deed dated 13.10.1997....."* out of the Khasra Nos. as detailed in the plaint. Further relief of permanent injunction was sought restraining the defendant from denying the title of the plaintiff over the suit land.

3. It was pleaded in the plaint that Balkishan (now deceased) father of Swaran Singh defendant, was joint owner in possession of the suit land as detailed in the head note of the plaint to the extent of 1/4th share. Balkishan had sold land measuring 5 Kanals 10 Marlas with measurement of 1 Karam was = 66" for consideration of Rs. 69,000/- vide registered Sale Deed dated 13.10.1997. It was pleaded that at that time, consolidation was in progress. As such, the old measurement of 1 Karam = 57½" was converted to new measurement of 1 Karam = 66". Accordingly, Sale Deed was executed as per new measurement. During consolidation, new khasra Nos. were carved out. Subsequently, the said consolidation was de-notified by the Government. After withdrawal of the consolidation proceedings vide Notification Ex.P3, the old scale prescribing 1 karam equivalent to 57½" came to be restored in the matter of the measurement



of the area of land situated in village Himmatpur. And thus, the area measuring 5 Kanal and 10 Marlas purchased by appellant/plaintiff stood converted into equivalent to the area measuring 7 kanal 4½ marlas. However, the revenue authorities inadvertently sanctioned mutation of only 5K 10 Marlas in the name of the plaintiff instead of 7K 4½ M. The plaintiff had repeatedly approached the defendant to make good the deficiency and not to deny the title of the plaintiff as per the Sale Deed, but to no avail. Hence, the present Suit was filed on 15.12.2008.

4. Notice was served upon the defendant however he failed to appear. As such, he was proceeded against ex parte.

5. In the ex parte evidence, the plaintiff proved the Sale Deed dated 13.10.1997 Ex.P1 by examining attesting witness Surjit Singh; and Gurpal Singh PW2 who was independent witness who supported the claim of the plaintiff; Jagtar Singh PW3, Patwari Consolidation who brought the summoned record Ex.PW3/A ad Ex.PW3/B; and plaintiff himself stepped into the witness box as PW1. However, the learned Civil Judge, Junior Division, Dasuya vide impugned judgment and decree dated 11.12.2010 dismissed the suit of the plaintiff. The plaintiff had filed appeal before the learned Additional District Judge, Hoshiarpur. The respondent/defendant was proceeded ex-parte even before the learned lower Appellate Court. The appeal filed by the plaintiff was also dismissed by the Additional District Judge, Fast Track Court, Hoshiarpur vide judgment and decree dated 10.01.2014. Hence, the present Second Appeal by the plaintiff.



6. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that it is not disputed that the appellant had purchased suit land measuring 5K 10 M with measurement of 1 Karam = 66" by way of registered Sale Deed dated 13.10.1997 Ex.P1. Consolidation proceedings were going on at that time. However, subsequently the consolidation was de-notified, and the old measurement of 1 Karam = 57½" was reverted; and therefore, the plaintiff as per the old measurement, was entitled to 7K 4½ M of land. However, the revenue authorities had mistakenly sanctioned mutation for only 5K 10M. However, the learned Courts below have failed to appreciate these facts.

7. It is submitted that the learned Courts below are in error in dismissing the suit of the plaintiff on flimsy reasoning that the plaintiff had failed to produce the Sale Deed of Balkishan/vendor of the plaintiff. It is submitted that it is not disputed that suit property was sold to the plaintiff by way of registered Sale Deed dated 13.10.1997. As such, title of Balkishan is nowhere in dispute; and there was no requirement for producing Sale Deed in his favour. Moreover, from the oral and documentary evidence on record, ownership of Balkishan over the suit land is established. Mere non-production of the Sale Deed pertaining to ownership of vendor Balkishan is inconsequential on merits of the suit claimed. Even otherwise, presumption of truth is attached to revenue entries in khatoni istemal i.e. consolidation papers wherein Balkishan is shown to be owner of 1/4th share in the land comprised in specific killa nos. In any event, neither defendant had appeared, nor his father to



dispute the ownership of the land in question or to deny the validity of Sale Deed. As such, the appellant could not have been non-suited.

8. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees be set aside.

9. *Per contra*, learned counsel for the respondent/defendant submits that the impugned judgments and decrees suffer from no error. The appellant cannot claim more share of the land than what was sold to him. It is submitted that when title of the vendor of the plaintiff is not proved how can the plaintiff lay claim to the suit property. He, accordingly, prays for dismissal of the present appeal.

10. No other argument is raised on behalf of the parties.

11. I have heard learned counsel for the parties and perused the case file and the lower Court records in minute detail. I have given my thoughtful consideration to the submissions made on behalf of the parties. I find merit in the submissions advanced on behalf of the appellant.

12. The Trial Court has dismissed the suit vide judgment and decree dated 11.12.2010 on the grounds that: a) the plaintiff has not produced on record the sale deed of his vendor from whom he has purchased the property. It was held that until and unless it is proved that the vendor of plaintiff has purchased the property with the new measurement of 66", it cannot be said that the vendor has sold the land to plaintiff with the new measurement; and b) that the Suit of the plaintiff is bad for non joinder of necessary party i.e. revenue authority.



13. The lower Appellate Court dismissed the appeal vide judgment and decree dated 10.01.2014 on the grounds that: - a) The appellant cannot claim the land measuring 7 Kanals 4½ Marlas with measurement 1 Karam = 57½" when the land was specifically sold as per Ex.P1 by specifically showing 1 Karam = 66". Thus, now the appellant cannot claim that 1 Karam be measured as 57½"; and b) The appellant has not produced on record sale deed of Balkishan from whom he has purchased the property.

14. I find the reasoning of the courts below to be fallacious and based on a misreading of the facts, pleadings, and of the evidence.

15. A perusal of the Sale Deed dated 13.10.1997 Ex.P1 (available at page 47 of the LCR) shows that Balkishan sold 5 Kanals 10 Marlas out of new khasra nos. 16R/7,18,23,24,25R/3/1,47R/1/3, 2, 3, 8, 9, 10/1, 38R/9, 12, 19, 22 and 42/1 situated in village Himmatpur, Tehsil Dasuya, District Hoshiarpur vide registered sale deed dated 13.10.1997. Total land measuring 5K 10M *with the measurement of 1 Karam = 66"* was sold by Balkishan to the appellant for sale consideration of ₹69,000/-. During consolidation, old measurement of 1 Karam = 57½" was converted to new measurement of 1 Karam=66", and new Khasra numbers were carved out. Accordingly, Sale Deed was executed in favour of the appellant as per new measurement i.e. 1 Karam=66" selling total land measuring 5K 10M out of the new Khasra Nos. 16R/7, 18, 23, 24, 25R/3/1, 47R/1/3, 2, 3, 8, 9, 10/1, 38R/9, 12, 19, 22 and 42/1.



16. Subsequently, the said consolidation proceedings were denotified vide Notification dated 01.06.2000 Ex.P3 (available at page 65 of the LCR). Resultantly, old measurement of 1 Karam = $57\frac{1}{2}$ " came back into operation. Also, the Khasra Nos. comprising the land sold vide the sale deed dated 13.10.1997 came to be denoted in the revenue record as 734 (11-0), 705 (8-0), 733 (6-16), 735(3-16) and 732 (0-9). However, incorrect mutation was sanctioned in favour of the plaintiff for 5K 10M land only with measurement of 1 Karam = $57\frac{1}{2}$ ". As defendant had sold 5K 10M of land as per measurement of 1 Karam = 66", therefore, if old measurement of 1 Karam= $57\frac{1}{2}$ " is to be applied, plaintiff would be entitled to land measuring 7K $4\frac{1}{2}$ M. Thus, there was no error in the prayer of the plaintiff that plaintiff be declared joint owner in joint possession *"to the extent of 7 Kanals $4\frac{1}{2}$ marlas with measurement of 1 Karam = $57\frac{1}{2}$ " being the equal area of 5 Kanals 10 marlas with measurement 1 Karam = 66."* (emphasis added).

17. However, the learned Courts below have rejected this prayer of the plaintiff on the ground that title of vendor of the plaintiff was not proved. The said reasoning is flawed as title of Balkishan has never been disputed. Moreover, title of Balkishan is amply established from the revenue entries on record including khatoni istemal i.e. consolidation papers wherein Balkishan is shown as owner of the suit land to the extent of $\frac{1}{4}$ th share. As per khatauni Istemal, Balkishan was owner of the $\frac{1}{4}$ th share in the land comprised in inter-se Khasra Nos. 1/3(0-12), 2 South (3-7), 9 North (3-11) 10/1 North (0-14), 3 South (3-7), 8 North (3-11). Viewed



thus, the non-production of the sale deed pertaining to the ownership of vendor Balkishan was of non consequence on the merits of the suit claim.

18. It is trite Law that Presumption of truth is attached to revenue entries in the khatoni istemal. Besides, the said entries have not been rebutted at any stage. Therefore, non-suiting the plaintiff on this ground is not maintainable.

19. Learned Courts below have also dismissed the suit of the plaintiff on the ground that there was nothing to indicate that at the relevant time, consolidation proceedings were going on. However, even the said reasoning is unsustainable as the plaintiff has produced the above-mentioned Notification dated 01.06.2000 Ex.P3 (at page 65 of the LCR), denotifying the consolidation proceedings in which it is clearly mentioned that *“Notification No. G/1137-A, dated the 13th June, 1991 issued under section 14(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, in so far as it relates to the consolidation operations in the revenue estate of village Himatpur Hadbast No. 205, Tehsil Dasuya, District Hoshiarpur”*, was withdrawn. Admittedly, the suit land of the appellant is situated in village Himmatpur. This Notification establishes that at time of execution of Sale Deed, consolidation proceedings were ongoing.

20. In this regard, the evidence of PW3 Jagtar Singh Patwari Consolidation, is also very important who has brought the summoned record Ex. P3/A - Ex. P3/B which are Photostat copies of Consolidation proceedings. This witness deposed that in the year 1991, consolidation



proceedings were going on in the village Himmatpur. Further, he deposed that later on consolidation proceedings were withdrawn vide notification No. G/1137-A by the Punjab Government and the previous position was restored. PW3 Jagtar Singh further deposed that plaintiff has purchased 5 Kanal 10 Marlas during the consolidation proceedings as per the measurement 1 Karam equal to 66"; and the area measuring 5 K 10 M comes to 7 Kanal 4 ½ marlas as per the old measurements. In this behalf, from the statement of Jagtar Singh Consolidation Patwari (PW3), below noted may be extracted: -

"Plaintiff has purchased 5 kanal 10 marlas during the consolidation proceedings and as per the measurement 1 karam equal to 66", the area measuring 5 kanal 10 marlas comes to 7 kanal 4 1/2 marlas as per the old measurements."

21. It too is in the statement of Jagtar Singh (PW3) that, when the notification relating to the consolidation operations in the village was withdrawn, the previous position was restored. However, as per the entries in Jamabandi for the year 2002-2003, the plaintiff came to be recorded as the owner to the extent of 1/4th share in the area comprised in Khasra Nos. 734 (11-0), 705 (8-0), 733 (6-16), 735 (3-16) and 732 (0-9) subsequent to the withdrawal of the consolidation operations pursuant to the de-notification thereof. After the withdrawal of the consolidation proceedings vide notification dated 01.06.2000 Ex. P3, the old scale prescribing 1 Karam= 57½" came to be restored in the matter of measurement of the area of the land situated in village Himmatpur, thus,



the area measuring 5 Kanals 10 Marlas purchased by plaintiff stood converted into the area measuring 7 Kanals 4½ Marlas. He was thus the joint owner in joint possession to the extent of his 1/4th share in the joint land measuring 32 Kanals.

22. In any event, withdrawal of consolidation ought not in any manner adversely effect the suit claim as the Sale Deed is unequivocally clear in its recitation that the suit land is 5K 10M was sold to the plaintiff on the basis of measurement of 1 Karam = 66". Thus, plaintiff could not have been denied suit decree of land measuring 5K 10M with 1 Karam = 66".

23. The third ground on which the plaintiff has been non-suited, is non-joinder of necessary parties i.e. the revenue department. However, in this regard, the learned Courts below have erred in not taking into consideration that the revenue department or for that matter the State Government was not a necessary party. No relief was claimed in the suit against them. Nor it is open to dispute that previous to the commencement of consolidation operations in the village, 1 karam meant 57 ½" and that during the consolidation operations 1 karam meant 66". Moreover, the measurement has been incorporated in the Jamabandi for the year 2002-03 Ex.P4 (available at page 69 of LCR). Therefore, Civil Court would have jurisdiction.

24. Keeping in view the above said facts, present Appeal stands **Allowed**. The suit of the plaintiff is decreed in terms of the registered Sale Deed dated 13.10.1997 as per which land measuring 5K 10M was sold to

the plaintiff with measurement of 1 Karam = 66". The impugned judgments and decrees of the learned Courts below are set aside.

25. Pending application(s), if any, stand(s) disposed of.

05.08.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No