

“i Have Given Thoughtful Consideration to the Averments Vs. Financial Commissioner Revenue Punjab and Others

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Court : Punjab and Haryana

Decided On : Jul-22-2013

Appellant : “i Have Given Thoughtful Consideration to the Averments

Respondent : Financial Commissioner Revenue Punjab and Others

Judgement :

LPA No.853 of 2012 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ***** LPA No.853 of 2012 Date of decision :

22. 7.2013 Daljit Singh and anotherApplicants/Appellants versus Financial Commissioner, Revenue, Punjab and othersRespondents CORAM: Hon'ble Mr.Justice Jasbir Singh Hon'ble Mr.Justice G.S.Sandhawalia Present:- Mr.B.S.Jaswal, Advocate, for the appellants Mr.A.S.Gill, Advocate, for the respondents --- Jasbir Singh, J.

(Oral) This appeal has been filed to lay challenge an order dated 12.1.2012 passed by a Single Bench of this Court, dismissing CWP No.8493 of 2010, filed by the petitioners. The appellants purchased 7 kanals 19 marlas of land falling in khaSr.Nos.58//15/4 (4-6).15/2 (0-3).15/3(1-2).15/1 (2-8) Khewat khatuni No.63/151, 153 situated in Village Dhianpur, Tehsil Baba Bakala.

That land was purchased by them from their father namely Chanan Singh.

Admittedly, Chanan Singh is entitled to 1/4th share in the joint khewat of land measuring 88 kanala 9 marlas.

The land sold by him is less than his share in the joint khewat.

On the basis of sale deed dated 22.1.2004, mutation was entered in their (appellants) names by the Assistant Collector 1st Grade.

Respondent No.2-Narain Singh went in appeal challenging above said mutation No.1418.

That appeal was dismissed vide order dated Kumar Ashwani 30.3.2007.

Respondent No.2- Narain Singh went in revision, which was 2013.08.01 10:24 I attest to the accuracy and integrity of this document LPA No.853 of 2012 -2- partly accepted on 16.9.2008 by the Commissioner holding that Chanan Singh was competent to transfer the land to his sons.

It was further said that in the column of 'Ownership', 'the names of the vendees be also entered along with the share of vendor Chanan Singh' i.e.the vendees were to be shown owner to the extent of 1/4th share in the joint khewat along with Chanan Singh, their father.

Accordingly, their names were entered in the joint khewat.

The appellants went in revision before the Financial Commissioner, which was dismissed vide order dated 2.2.2010.

It was specifically pointed out that vendees are to step into the shoes of Chanan Singh along with other share holders in the joint khewat and they cannot claim better title than their father/vendor.

The appellant came to this Court by filing CWP No.8493 of 2010, which was dismissed by a Single Judge of this Court vide order dated 2.1.2012.

To dismiss that writ petition, reliance was placed upon ratio of a judgment of Full Bench of this Court in Bhartu v.

Ram Sarup, 1981 PLJ 204.to say that sale of specific portion of land described by particular khaSr.number, by a co-owner out of the joint khewat would be a sale of share out of the joint land.

The above finding, in way affirms the finding given by the Commissioner vide order dated 16.9.2008.

Before dealing with the controverRs.in hand, it is necessary to mention here that after execution of the sale deed by Chanan Singh in favour of the appellants, respondent-Narain Singh filed a civil suit seeking declaration to the effect that the sale deed dated 22.1.2004 and mutation sanctioned thereupon, be set aside.

Kumar Ashwani 2013.08.01 10:24 I attest to the accuracy and integrity of this document LPA No.853 of 2012 -3- After notice, the following issues were framed by the Civil Court on 10.6.2006 :-

1. Whether the plaintiff is entitled to declaration as prayed for?.

OPP 2.Whether the sale deed dated 23.1.2004 executed by Chanan Singh son of Thakur Singh in favour of Manjit Singh, Daljit Singh and Surjit Singh sons of Chanan Singh regarding the land as fully detailed in the head note of the plaint is null and void and without consideration and is liable to be set aside?.

OPP 3.Whether the plaintiff is entitled to permanent injunction as prayed for?.

OPP 4.Whether the suit is not maintainable?.

OPD 5.Whether the plaintiff has no locus standi to file the present suit?.

OPD 6.Whether the plaintiff is estopped by his act and conduct for filing the present suit?.

OPD 7.Whether the suit is bad for misjoinder and nonjoinder of necessary parties?.

OPD 8.Whether the suit is barred under Section 41(h) of the Specific Relief Act?.

OPD 9. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?.

OPD 10. Whether the plaintiff has not come to the court with clean hands?.

OPD 11. Relief.

After looking into evidence of the parties, oral as well as documentary, including copy of jamabandi (Ex.P-2).the trial Judge came to a conclusion that sale deed was rightly executed and area so sold, is within the share of Chanan Singh-the vendor.

By making reference to the Revenue record, it was said that Chanan Singh was recorded in exclusive possession of the land, sold by him, to the extent of his share in the joint Kumar Ashwani 2013.08.01 10:24 I attest to the accuracy and integrity of this document LPA No.853 of 2012 -4- khewat.

It was further stated that when a co-sharer is in exclusive possession of specific portion of joint holding, he will continue in possession as a co-sharer, if it is not more than his share.

It was also said that sale by co-sharer is a sale from the joint khewat and the vendee become also a co-sharer in the land so purchased.

Regarding possession, it was specifically observed as under :- I have given thoughtful consideration to the averments supporting evidence as well as the contentions raised by both the counsel for parties.

The nature of the suit filed by the plaintiff is that the plaintiff has sought declaration pertaining to the sale deed dated 21.1.2004 executed by Chanan Singh in favour of Manjit Singh, Daljit Singh and Surjit Singh qua khaSr.No.58//15/4 (4-6).15//2//2 (0-3).15//3(1-2).15//2(2- 8) to be illegal, null and void.

The plaintiff has also challenged the mutation sanctioned on the basis of the sale deed dated 22.1.2004 by Chanana Singh in favour of defendants No.1 to 3.

It is evident from the copy of the sale deed Ex.

1 that Chanan Singh executed 7K-19M comprised in khaSr.No.58//15/4 (4-6).15//2 (0-3).15//3 (1-2).15/1 (2-8).in favour of his three sons whom are defendants No.1 to 3.

From the jamabandi Ex.P2, it is evident that Chanan Singh is one of the co-sharer in the joint holding.

Chanan Singh is recorded in exclusive possession of khaSr.No.57//11/2 (0-3).58//14 min (4-0).15/1 (2-8).15/2 (0-3).15/3 (1-2).17 min (0- 8).18/1/1/(3-5).18/2 (4-0).20/1 (4-0).It is evident that Chanan Singh executed the sale deed Ex.P1 pertaining to some of the khaSr.numbers mentioned in it which were in his exclusive possession in favour of defendants No.1 to 3.

It was held by their lordship in the citation titled Bhartu v.

Ram Sarup reported in 1981 PLJ 20.that sale of specific portion of land described by particular khaSr.number by a Co.Kumar Ashwani 2013.08.01 10:24 I attest to the accuracy and integrity of this document LPA No.853 of 2012 -5- owner out of the joint khewat would be a sale of share out of the joint land.

When a co-sharer is in exclusive possession of some portion of joint holding, he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned.

It is undisputed that a vendor cannot sell any property without better rights than he has.

Consequently, when a co-sharer sale his share in the joint holding or any portion thereof and puts the vendee into possession of the land in possession what he transfer, is his right as co-sharer in the said land and the right to remain its exclusive possession till the joint holding is partitioned amongst all the co-shareRs.Therefore, in view of the above citation, the plaintiff is established to be one of the co sharers along with other out of whom Chanan Singh in exclusive possession of the khaSr.number detailed in the head note alienated the said khaSr.numbers in favour of his three sons whom are defendants No.1 to 3 would amount to the sale of the share of Chanan Singh from then joint holding.

The pl has efficacious remedy to go in citation of the suit instead of seeking declaration challenging the sale deed dated 22.1.2004 and the mutation in favour of defendants No.1 to 3.

The suit filed by the plaintiff being one of the co-sharer against the other co-sharers is not maintainable.

As such, Issues No.1 to 3 are decided in favour of the defendants and against the plaintiff.

Thereafter, the suit was dismissed.

When notice of motion was issued by this Court, following contention of counsel for the petitioners was noted on 9.8.2012 :- Counsel for the appellants submits that the appellants are Co.sharers but are, admittedly, in possession of a specific portion of land.

The Revenue Officer was, therefore, required to record the petitioner's possession in a separate khatoni Kumar Ashwani 2013.08.01 10:24 I attest to the accuracy and integrity of this document LPA No.853 of 2012 -6- reflecting possession.

Notice of motion for 16.10.2012.

Counsel for the appellants admitted that they be treated as Co.sharer in the joint khewat.

However, their possession be shown over the land so purchased in a separate khatoni.

It is not in dispute that the vendor Chanan Singh was co-sharer in a joint khewat of land measuring 88 kanals 9 marlas.

As per Civil Court judgment, referred to above, he was in possession of land as per his share, out of which he has sold 7 kanals 19 marlas to his sons (appellants).Civil Court has so held, as per Revenue record, qua the land sold, in which the vendor was shown in exclusive possession.

If that is so, the said benefit cannot be denied to the appellants who had purchased land from original owner Chanan Singh.

Taking note of facts and circumstances, we dispose of this appeal holding that the respondents-appellants shall be treated as Co.shareRs.as per share in the joint khewat along with their father/vendor and their possession be also shown in the Revenue record as per the entries made in favour of their father/vendor namely Chanan Singh.

The arrangements so made shall be subject to the ultimate partition of the joint land, as has been said by the Civil Court also.

During partition, none of the parties be given benefit of the entries made in the Revenue Record.

(Jasbir Singh) Judge (G.S.Sandhawalia) Judge 22.7.2013 Ashwani Kumar
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