
(2004) 09 P&H CK 0033

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2696 of 1984

Jagat Singh (Deceased)

APPELLANT

Vs

Babu Singh and Others

RESPONDENT

Date of Decision: Sept. 29, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Citation: (2005) 1 CivCC 789 : (2005) 139 PLR 543 : (2005) 2 RCR(Civil) 268

Hon'ble Judges: Nirmal Singh, J

Bench: Single Bench

Advocate: N.P.K. Singh, for the Appellant; J.S. Chahal, for the Respondent

Final Decision: Allowed

Judgement

Nirmal Singh, J.

This is plaintiffs appeal against the judgment dated 29.8.1984 of the learned Lower Appellate Court affirming in appeal the judgment of the learned trial Court, whereby the suit of the plaintiff was dismissed.

2. The plaintiff filed a suit alleging that he was owner in possession of 5/8th share in 749 kanals 2 marlas of land as detailed in the head note (a) and 276/864 share of rasta as detailed in head note (b) of the plaint situated in the area of village Alamwal P.S. Mahilpur, District Hoshiarpur. It was further pleaded that defendant Nos. 1 to 3 got sanctioned mutation No. 173 in their favour in connivance with the revenue authorities on the basis of a compromise deed and the wrong entries in the revenue record required to be corrected. The defendants obtained the compromise decree by mis-representation and fraud. The compromise pertained only to the estate of Uday Ram, father of the parties. Suit land was never owned exclusively by Uday Ram, but was jointly owned by Uday Ram and Ram Ditta in equal shares. The plaintiff inherited the share of Ram Ditta and it was never in dispute in the previous litigation. The plaintiff asked the respondents to admit the claim but they denied.

Hence the suit was filed.

3. Respondents No. 1 to 5 and 7 to 10 contested the suit and controverted the allegations and raised a number of legal objections.

4. On merit, it was pleaded that in Civil Suit No. 50 of 1977 which was pending between the plaintiff and defendant Nos. 1 to 10 decided between the parties in which the plaintiff had admitted that he had 1/4th share in the land in suit. Mutation was accordingly sanctioned on the basis of civil Court decree in the presence of the plaintiff. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is the joint owner in possession of 5/8 share of the land as detailed in the head note (a) of the plaint? OPP.

2. Whether the plaintiff is the owner in possession of 276/864 share of land as detailed in the head note (b) of the plaint? OPP.

3. Whether the suit is within time? OPP

4. Whether the suit is barred by principles of resjudicata? OPD

5. Whether the plaintiff is estopped from filing this suit by his act, conduct and admissions and acquiescence? OPD

6. Whether the description of the property given in the plaint is wrong, if so to what effect? OPD.

7. Whether the suit is bad for mis-joinder of proper and necessary parties as alleged? OPD.

8. Whether the suit as framed is maintainable in the present form? OPP

9. Whether Ram Ditta and Udai Ram were jointly owner in possession in equal share of the suit land? OPP.

10. Whether the plaintiff is entitled to the share of Ram Ditta on the basis of adoption deed dated 17.7.1936? OPP."

5. After recording the evidence of the parties, the learned Trial Court decided issue No. 1 & 2 and held that plaintiff is the joint owner in possession to the extent of 1/4th share of the suit land as detailed in head note (a) and (b) of the plaint. Issue Nos. 3, 5, 7, 8 and 10 were decided in favour of the defendants. Issue Nos. 4, 6 and 9 were decided in favour of the plaintiff. The suit of the plaintiff was dismissed. The findings recorded by the trial Court were affirmed by the learned Lower Appellate Court. Hence, this appeal.

6. Ms. N.P.K.Singh, learned counsel for the appellant submitted that both the courts below held that plaintiff-appellant is the owner in possession of 1/4th share in the suit land as detailed in head notes (a) and (b) of the plaint. She further submitted that despite giving specific findings that plaintiff is owner in possession on the basis

of compromise deed Ex.D2 and Civil Court decree, the suit of the plaintiff with regard to 1/4th share has been dismissed. She contended that plaintiff is not only the owner in possession of 1/4th share of land but is joint owner in possession of 5/8th share of the land in dispute as mentioned in head note (a) of the plaint and 276/864 share in rasta as detailed in head note (b) of the plaint. She further submitted that plaintiff is entitled to 1/4th share as the adopted son of Ram Ditta and another 1/4th share as natural son of Udey Ram. She contended that compromise deed Ex.D2 is the result of fraud played by the respondents. She contended that this compromise was with regard to the land of Udey Ram and not with regard to the land of Ram Ditta who was the brother of Udey Ram.

7. Mr. J.S.Chahal, learned counsel for the respondent very fairly and candidly made a statement that respondents have no objection for decreeing the suit that plaintiff is owner in possession of 1/4th share as per findings recorded by the trial Court but he is not entitled to 5/8th share in the suit land in view of the compromise deed Ex.D-2. He points out that on the basis of this compromise, compromise decree was passed and applicant has acted upon it.

8. After hearing the learned counsel for the parties and perusing the record, I am of the considered opinion that the courts below have committed an error for not decreeing the suit of the plaintiff with regard to 1/4th share of the suit land as detailed in head notes (a) and (b) of the plaint. The learned trial Court after appreciating the evidence on record has held as under:-

"It has been proved on record through the statement of DW-2 and DW-4 that plaintiff executed compromise Ex.D2 with his free mind. Later on suit instituted on the basis of plaint Ex.D-4 was decreed thus holding the plaintiff as owner of 1/4th share in the suit land. Not only this plaintiff admitted the compromise and decree passed upon it, as correct and moved an application for separation of his 1/4 share as is clear from copy of application Ex.D-3. Even mutation on the basis of compromise decree was also entered. No doubt the plaintiff was having 1/2 share prior to the execution of the compromise deed Ex.D-2 but if he entered into this compromise with his free mind, then he has no chance to say that it was got entered from him by fraud, the fact which the plaintiff has miserably failed to prove on record. Consent decree so passed on the basis of the compromise deed Ex.D-2, cannot be challenged now by the plaintiff as laid down in Rule 3-A of Order 23 of C.P.C. Plaintiff has failed to withdraw the admission as contained in Ex.D-2 showing it to be untrue, as such admission so contained in Ex.D-2 is conclusive proof of the fact that plaintiff relegated himself to have 1/4 share in the suit property. Accordingly I hold that plaintiff is joint owner in possession to the extent of 1/4 share of the suit land as detailed in head note (a) of the plaintiff. Issue No. 1 decided accordingly.

16. Suit land as mentioned in the head note (b) of the plaint is also part of the land which was subject matter of the plaint copy of which is Ex.D-4 which was later on

compromised vide compromise deed Ed.D.2 as such plaintiff has also 1/4 share in the land as mentioned in the head note (b) of the plaint. Extra to it, plaintiff was also given 4 kanals of land of Khasra No. 10/18/2 vide compromise deed Ex.D-2 as such plaintiff is also owner of 4 kanals of land bearing khasra No. 10/18/2. This issue is decided accordingly."

9. These findings recorded by the trial Court were affirmed by the learned Lower Appellate Court. Despite the specific findings given by the courts below that plaintiff is owner in possession of 1/4th share of the suit land, the suit has been dismissed. The court below should have passed a decree to that extent.

10. The Courts below have rightly dismissed the claim of the plaintiff with regard to 5/8 share in the property in dispute.

11. As it has been discussed above that the plaintiff has executed a compromise deed Ex.D-2. This compromise is not the result of any mis-representation or fraud, rather it has been proved that plaintiff has executed this compromise with his free Will and on the basis of this compromise, the Civil Court has passed the decree. The plaintiff has not challenged that decree, instead has acted upon it.

12. Once the appellant has executed a compromise on the basis of which a decree was passed and the appellant has acted upon the decree, he has no right to say that compromise is the result of mis-representation or fraud. Therefore, I hold that plaintiff is not entitled to 5/8th share in the property in dispute.

13. For the reasons recorded above, the appeal is partly allowed and it is held that plaintiff-appellant is entitled to 1/4th share in the suit land as detailed in head notes (a) and (b) of the plaint.,