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High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2654 of 2010 (O and M)

Mir Singh	APPELLANT
Vs	
Ram Singh and Others	RESPONDENT

Date of Decision: Aug. 16, 2013

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: A.K. Goel, for the Appellant; R.A. Sheoran, Advocate for Mr. Jagtar Singh, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.
This is plaintiff''s second appeal challenging the judgment and decree of the trial Court whereby his suit for possession in respect of agricultural land measuring 9 kanals 14 marlas as detailed in the plaint has been dismissed and also against dismissal of his appeal by the Lower Appellate Court. The brief facts of the case, necessary for disposal of the instant appeal and as emerging from the aforesaid impugned judgments and decrees, are that the appellant filed the instant suit for possession of land measuring 9 kanals 14 marlas i.e. half share of land measuring 19 kanals 7 marlas, out of the total land measuring 39 kanals 15 marlas comprised in rectangle and killa No. 106//16, 17, 24, 115//4 and 67//11, 12/1, Khewat No. 153, as per the jamabandi for the year 1982-83.

2. It has been submitted in the suit that Moti Ram was the common ancestor of the parties to the suit and he was owner in possession of the agricultural land situated in the revenue estate of Badhra. He was also having Shamlat land of his share in the Badhra and that land was measuring 99 Bighas 13 Biswas comprised in khewat No. 107 Khatoni No. 301 of 319 as per jamabandi for the year 1970-71. It was further alleged that in the year 1974 some of the co-sharers of the Shamlat land got separated their land by way of filing of the partition petition before Tehsildar, Charkhi Dadri and land of the parties in the present suit came in specific khewat No. 153 which was still joint.

3. It was averred that Moti Ram died about 99 years ago and his land was inherited by his three sons, namely, Neta, Bahadar and Kishan Lal but due to inadvertence of the revenue officials, the mutation of inheritance of Moti Ram was entered only in the name of Bahadar and Kishan Lal and later on Bahadar died issueless and the mutation of his share was entered in the name of Neta and Kishan Lal equally but despite the entry in the revenue record, Neta and Kishan Lal during their lifetime and after their death, their legal heirs used to cultivate the land in equal shares. It was further submitted that the plaintiff-appellant was minor and remaining legal heirs of Neta son of Moti Ram filed a Civil Suit titled "Chandera Versus Sheo Kalan" in the Civil Court, Charkhi Dadri and in that suit, defendants admitted the claim of the plaintiff and ultimately, the said suit was decreed on 1.7.1970 and by that Civil Court decree, the shares of the parties were got corrected in the revenue record but that civil suit did not include the Shamlat land of Moti Ram, despite that Shamlat land is being cultivated by legal heirs of Neta and Kishan Lal equally.

4. It is the further case of the plaintiff-appellant that in the year 1989, Sheo Kalan and Madiya filed a partition petition of the suit land (Shamlat Land) before Assistant Collector 2nd Grade, Charkhi Dadri and in that petition, Sheo Kalan and others claimed their 2/3rd share and during the pendency of that partition proceedings, the area of Badhra became separated Sub Division and that partition petition was transferred from Assistant Collector 2nd Grade, Charkhi Dadri to Assistant Collector 2nd Grade, Badhra but the plaintiff-appellant did not receive any intimation in this regard. Later on, the Assistant Collector 2nd Grade, Badhra issued "Sanad Taksim" and when the plaintiff came to know, he filed objections but the same were dismissed. It was alleged that thereafter, on 12.6.1992, defendant-respondents occupied 2/3rd land out of the land measuring 39 kanals 15 marlas and they prevented the plaintiff and proforma defendants from entering into that land and defendants also stated that they also got entered their name in the revenue record and mutation was also sanctioned in their favour, then the plaintiff-appellant came to know about the false entry in the revenue record in favour of the defendants. Since defendants failed to deliver the possession of the half of the suit land i.e. 19 kanals 7 marlas out of the total land measuring 39 Kanals 15 marlas to the plaintiff and proforma defendants, necessity arose to file the present suit.

5. On the other hand, the suit was contested by the defendants. Defendant No. 2 filed written statement wherein the relationship between the parties was admitted but half of the share of the plaintiff and proforma defendants in the suit land was denied. It was alleged that the land comprised in khewat No. 153 was owned and possessed by Sheo Kalan and Madiya to the extent of 3/4th share and Sheo Kala died unmarried and issueless, and therefore, his share was vested in defendant No. 1. So after the death of Sheo Kalan, suit land was being owned and possessed by defendant No. 1 to the extent of 3/4th share on the basis of partition petition decided on 18.10.1989 of Assistant Collector 2nd Grade, Badhra and its possession was also delivered to the defendants vide Rapat No. 409 dated 15.6.1990. Denying all other averments, dismissal of the suit

was prayed for.

6. Defendants No. 11, 12, 14 to 18 filed their admitted written statement. Defendants No. 1, 3 to 6 did not prefer to contest the suit of the plaintiff and ultimately, they were proceeded against ex parte.

7. The plaintiff filed replication to the written statements of contesting defendants controverting the pleas taken by them in the written statement.

8. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the pedigree table given in para No. 1 is correct? OPP

2. Whether Moti Ram has a share in shamlat land village Badhra? OPP

3. Whether on the death of Moti Ram, his property divided upon his three sons Neta, Bahadur and Kishan Lal in equal shares? OPP

4. Whether the defendants took forcible possession in 1995 of the disputed property of the plaintiff and proforma defendants are entitled to re-possession? OPP

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

6. Whether the suit of the plaintiff is not maintainable in the present form? OPD

7. Whether the suit of the plaintiff is within limitation? OPD

8. Whether the plaintiff is estopped by his own act and conduct? OPD

9. Whether the defendants are owner in possession by way of adverse possession? OPD

10. Relief.

9. Thereafter, the parties led evidence in support of their respective stand.

10. The trial Court after perusing the evidence and hearing counsel for the parties, decided issue No. 1 in favour of the plaintiff and issues No. 2 to 4 against him. Issues No. 5, 6 and 7 were decided in favour of defendants whereas issues No. 8 and 9 were decided against them and the suit was dismissed vide judgment and decree dated 18.9.2006.

11. Feeling aggrieved therefrom, the plaintiff-appellant filed an appeal which was also dismissed by the Lower Appellate Court vide impugned judgment and decree dated 15.3.2010. The relevant part of the judgment and decree reads thus:

I have given considerable through to the rival submissions made by learned counsel for the plaintiff as well as learned counsel for the defendants and after carefully scrutinizing the evidence as well as documents placed on file by both the parties, I am of the considered opinion that arguments placed on file by both the parties, I am of the considered opinion that arguments advanced by learned counsel for plaintiff are devoid of merits. From the evidence both, oral as well as documentary, placed on file by the plaintiffs, in my opinion, plaintiff has failed to prove on record that he is entitled for possession of land measuring 9 Kanals 14 Marlas i.e. Half share of the land measuring 19 Kanals 7 Marlas. Admittedly, Moti was the common ancestor of the parties to the suit. From the evidence brought on record by the defendants, it is clear that the parties to the suit were co-shares in the suit land. A perusal of Ex.P12 copy of jamabandi for the year 1970-71 reveals the specific shares of the parties to the suit. The learned counsel for the plaintiff contended that DW.3 Ram Singh, in his cross-examination has admitted that the suit land is Shamlat land, so it is proved that the land in dispute is Shamlat land, but the said contention of learned counsel of the plaintiff is devoid of merits because the plaintiff has failed to bring on record any cogent or convincing evidence to prove that the suit land is Shamlat land. It is well settled that a party who has come to the court has to prove his own case independently and he cannot take advantage of weaknesses of the other party as in the present case, the plaintiff was required to bring on record cogent or convincing evidence to prove that the suit land is Shamlat land, but he has failed to do so. Reference in his connection may be to Chandan (died) through his LRs Vs. Lakhi Ram (Supra).

Further, from perusal of Ex.D2 copy of partition application dated 29.8.1988, it is clear that the defendants filed petition of partition of the suit land before the Court of Assistant Collector 2nd Grade, Ch. Dadri on 29.8.1988 and from perusal of Ex.D4, copy of order dated 9.2.1989 passed in said petition, is crystal clear that plaintiff Mir Singh appeared in that partition petition on 23.1.1989 along with his counsel and filed his reply, but during the pendency of that partition proceedings, the petition was transferred to Assistant Collector 2nd Grade, Badhra. Further, from perusal of Ex.D5 copy of order dated 22.8.1989, it is clear that notice was earlier issued to Sh. Vijay Singh, Advocate for plaintiff, but he, after receiving the notice from the court of Assistant Collector 2nd Grade, Badhra, opted no to appear in the partition proceedings before Assistant Collector 2nd Grade, Badhra issued Ex.D6 Sanad-Taksim, Ex.D7 copy of field book and Ex.D8 copy of site plan and as per Ex.D9, the possession of the suit land was delivered to the defendant on 15.6.1990 with the help of the police. Later on, the plaintiff filed a review petition in the court Assistant Collector 2nd Grade, Badhra, but the same was dismissed. In the circumstances, it is held that is does not prove that the plaintiff had no knowledge about the pendency of the same. Admittedly, the present suit was filed by the plaintiff on 18.9.1997 challenging the order dated 15.6.1990 of Assistant Collector 2nd Grade, Badhra after lapse of a period of seven years, therefore, the present suit is not maintainable being time barred. The learned trial court has thus, rightly concluded that the plaintiff has failed to prove his case and the suit of the plaintiff is time barred.

12. Still not satisfied, the plaintiff-appellant has filed the instant appeal submitting that the following substantial questions of law arise for consideration of this Court:

(i) Whether the title to the property is to be decided by the competent Civil Courts or by the entries made available in the revenue records which are meant only for "fiscal purpose" i.e. payment of land revenue?

(ii) Whether there is any period of limitation prescribed under the provisions of the Limitation Act, 1963 for seeking possession of the property devolving upon inheritance?

(iii) Whether the revenue entries recorded by the revenue officials not based on any order or document of title could be taken into consideration?

(iv) Whether a fact detailed in the plaint about the nature and inheritance of the property not specifically denied in the written statement of the defendants and admitting the same in cross-examination while appearing as witness to defend their plea could not be said to be an admission of a fact?

13. Counsel for the appellant has vehemently argued that the Courts below have erred at law while dismissing the suit being time barred observing that the appellant was required to file the present suit by challenging the order of Assistant Collector 2nd Grade, Badhra within three years from the date of order. Counsel for the appellant has further argued that the aforesaid finding is perverse as the suit has been filed on the basis of inheritance and there being no period of limitation prescribed under the provisions of the Limitation Act, 1963 and the well settled proposition of law that the inheritance does not remain in abeyance and opens immediately after the death of last male-holder, the appellant cannot be non-suited on the ground that the suit filed by him is time barred. It is the further case of the appellant that the Courts below have misread and misinterpreted the pleadings of the parties and the evidence adduced as the respondents have not specially denied the pleadings of the appellant with regard to the inheritance of the suit land and the defendant-respondents have only alleged that they are owners in possession of the suit land to the extent of 3/4th share and the plaintiff and proforma defendants in 1/4th share. Even the fact that property was part of Shamlat land has been admitted by defendant Ram Singh DW-3 in his cross-examination. The admission about a fact is a best piece of evidence but the Courts below have brushed aside the admission of the respondents without assigning any reason and in fact, the Courts below ought to have ignored the entire entries of revenue record pertaining to the shares wrongly shown in favour of the parties to the suit. It is settled proposition of law that revenue record confers no title on the party and the title can only be decided by a competent Civil Court.

14. Learned counsel for the appellant has further argued that the appellant or any of the proforma defendants were never served with any notice about transfer of partition proceedings from the Court of Assistant Collector 2nd Grade, Charkhi Dadri to the court of Assistant Collector, 2nd Grade Bhadra. The evidence on record shows that

proceedings before the Revenue Court were conducted in haste so as to defeat the rights of the plaintiff-appellant and proforma defendants based on inheritance and the petition was decided against ex parte in favour of the defendant-respondents. Even the application for setting aside the ex parte order was also rejected. Moreover, in view of the admission of the defendants that suit land was Shamlat land, which was not required to be proved, the impugned judgment and decrees of the Courts below are liable to be set aside.

15. On the other hand, learned counsel for the respondents has supported the findings of the Courts below and has argued that both the Courts below on appreciation of evidence and facts on record, have recorded a concurrent finding in their favour and no fault can be found with the same and has prayed that the appeal be dismissed being without any merit.

16. I have heard learned counsel for the parties and perused the impugned judgment and decrees of the Courts below.

17. At this stage, it may be noticed that admittedly, the appellant has filed the instant suit for possession of Shamlat land on the basis of inheritance. However, there is nothing on record that the suit land was ever ordered to be partitioned and distributed between the proprietors/co-sharers. It is well settled that a proprietor may claim right interest or title in Shamlat land only if such a land has been found surplus after utilization of the same for common purposes and has been ordered to be distributed. Neither such foundation of facts have been pleaded in the case in hand nor proved. In view of the aforesaid fact alone, the present suit for possession of Shamlat land cannot be held to be maintainable only because the defendants have admitted the suit land as Shamlat Land. Further, the appellant has failed to produce any cogent and convincing evidence on record that the suit land is a Shamlat land.

18. Moreover, from the facts, it is crystal clear that the appellant has filed the instant suit to challenge the order of the Assistant Collector 2nd Grade, Badhra dated 15.6.1990 (Annexure P-9) whereby possession of the land was delivered to the respondents in pursuance of the orders passed by the competent Revenue Authorities. The case of the plaintiff and proforma defendants is that the disputed land was owned and possessed by Moti and same was part of Shamlat land of the Biswedar of Badhra and initially it comprised in khewat No. 301 to 319 but in the year 1974 some co-shares got their land partitioned from the revenue officials and disputed and separated in khewat No. 153, whereas the plea of the defendants is that disputed land was not owned and possessed by Moti and defendants got the suit land separated from the Assistant Collector 2nd Grade, Badhra and defendants are having their 3/4th share. In order to prove his case plaintiff mainly relied upon Ex.P12 i.e. jamabandi for the year 1970-71 but as per Ex.P12 Sheo Kalan and Madiya have been shown to be owner in possession of 3/4th share whereas Neta son of Moti has been shown to be owner in possession of 1/8th share whereas Mir Singh and others are having 1/8th share. On the basis of Ex.P12 it cannot

be inferred that disputed land was owned and possessed by Moti because plaintiff has failed to adduce any revenue record prior to 1970, which could reveal that disputed land in the present suit was owned and possessed by Moti along with other Biswedar of Badhra. Though, defendant-DW3 in his cross-examination has admitted that suit land is Shamlat land nevertheless, mere admission of DW3 is not sufficient to hold that disputed land was owned and possessed by Moti and it is the plaintiff-appellant, who has to prove his case independently and he cannot take advantage of the weakness in the defendants case. In the present case, plaintiff-appellant has to prove by the revenue record that suit land was initially owned and possessed by Moti and parties to the suit, inherited the same.

19. The other argument of the appellant that the Courts below have ignored the fact that the petition for partition of the suit land before the Assistant Collector 2nd Grade, Charkhi Dadri was transferred to Assistant Collector, 2nd Grade Bhadra, but no notice was given to him and the petition was decided against ex parte and thus, the same being illegal and is liable to be set aside, is also without any merit. It is the contention of the appellant that he came to know about the ex parte proceedings in the year 1995 when the defendants-respondents prevented the plaintiff-appellant from entering into the suit land, however the said argument cannot be accepted as from the perusal of Ex.D2 copy of partition application dated 29.8.1988, it is clear that the defendant-respondents filed petition of partition of the suit land before the Assistant Collector 2nd Grade, Charkhi Dadri on 29.8.1988 and from perusal of Ex.D4, copy of order dated 9.2.1989 passed in the said petition. It is crystal clear that appellant-Mir Singh appeared in that petition on 23.1.1989 along with his counsel and filed reply. Further from perusal of Ex.D5, copy of order dated 22.8.1989, it is clear that notice was earlier issued to Sh. Vijay Singh, Advocate, representing the appellant but he after receiving the notice from the Court of Assistant Collector 2nd Grade, Badhra opted not to appear in the partition proceedings before the said Authority and when none appeared on behalf of the appellant, the Assistant Collector 2nd Grade, Badhra issued Ex.D6 Sanad Taksim, Ex.D7 copy of field book and Ex.D8 copy of site plan and the possession of the suit land was delivered to the defendant-respondents on 15.6.1990 with the help of the police. Later on, the appellant filed a review petition in the court of Assistant Collector 2nd Grade, Badhra which was dismissed. Admittedly, the present suit was filed by the plaintiff-appellant on 18.9.1997 challenging the order dated 15.6.1990 of the Assistant Collector 2nd Grade, Badhra after a lapse of a period of seven years, and in these circumstances, it cannot be held that the plaintiff had no knowledge about the pendency of the same. Thus, no illegality or infirmity can be found in the impugned judgments and decrees of the Courts below whereby suit of the appellant has been held to be time barred.

20. Thus, for the reasons recorded above, no fault can be found with the impugned judgments and decrees of the Courts below.

21. No substantial question of law, as raised, arises in this appeal. Dismissed.