

HRSI010050172017



Presented on : 22-09-2017
Registered on : 22-09-2017
Decided on : 07-08-2021
Duration : 3 years, 10 months, 15 days

**IN THE COURT OF RAJESH MALHOTRA, DISTRICT JUDGE,
DISTRICT COURTS, SIRSA. (UID-HR0059)**

CIS No.CA-388-2017

Sachin Nanda aged 38 years son of Shri Yash Pal Nanda, resident of Gali Ram Swaroop Bansal Wali, Hisar Road, Sirsa, Tehsil and District Sirsa.

...Appellant/plaintiff.

Versus

1. Sushil Azad son of Shri Azad Singh
2. Girish Kumar son of Shri Pawan Kumar
No.1 & 2 both residents of village Shahpur Begu, Tehsil and District Sirsa.
3. Krishna Devi daughter of Shri Mohan Lal and wife of Shri Rakesh Kumar son of Shri Vidya Dhar, resident of Aggarsain Colony, Sirsa Tehsil and District Sirsa (Corner Gali 1 to 6).
4. Raj Kumar son of Shri Jot Ram son of Shri Roor Mal, resident of Gali Beri wali, Sirsa, Tehsil and District Sirsa.
5. Vijender Kumar son of Shri Sita Ram son of Shri Ghisa Ram, resident of Gali Beri Wali, Sirsa, Tehsil and District Sirsa.
6. Surender Kumar son of Shri Basant Lal son of Shri Chaman Lal, resident of Gali Beri Wali, Sirsa, Tehsil and District Sirsa.
7. Rakesh Kumar son of Shri Om Parkash son of Shri Kishan Dass, resident of Aggarsain Colony, Sirsa, Tehsil and District Sirsa.
8. Mamta Devi daughter of Satya Narain son of Shri Gauri Dutt, resident of Rania Gate, Sirsa, Tehsil and District Sirsa.
9. Seema Devi daughter of Shri Jiya Lal son of Shri Beli Ram, resident of Aggarsain Colony, Sirsa, Tehsil and District Sirsa (near colony

Rajesh Malhotra,
District Judge,
Sirsa.
(UID No.HR0059)

Tubewell).

10. Manju wife of Shri Bhim Sain son of Shri Kanshi Ram, resident of village Shahpur Beggu, Tehsil and District Sirsa.
11. Ashok Kumar son of Shri Ram Kumar, resident of village Shahpur Begu, Tehsil and District Sirsa.
12. Anita Rani wife of Shri Prem Parkash son of Shri Mala Ram, resident of H.No. 35 Dwarka Puri, Sirsa, Tehsil and District Sirsa.
13. Veena Rani wife of Shri Raj Kumar son of Shri Kashmiri Lal, resident of village Shahpur Beggu, Tehsil and District Sirsa.
14. Ram Swaroop son of Shri Mani Ram, resident of village Shahpur Beggu, Tehsil and District Sirsa.
15. Gurnam Singh son of Shri Ram Singh son of Shri Jhanda Singh, resident of village Shahpur Beggu, Tehsil and District Sirsa.
16. Jashandeep wife of Shri Jasbir Singh son of Shri Raghubir Singh, resident of village Shahpur Beggu, Tehsil and District Sirsa.

...Respondents/Defendants.

Appeal against the judgment and decree dated 23.08.2017 passed by the Court of Shri Sumit Turkiya, the then Learned Civil Judge (Junior Division), Sirsa, in suit bearing No.2-C of 2016 (CIS No.CS-15-2016).

Argued by: Shri Y.P.Nanda, Advocate, for appellant.
Shri Ravinder Monga, Advocate, for respondent No.12.
Respondents No.1 to 11 and 13 to 16 already exparte before lower court.

J U D G M E N T:

The present appeal is preferred by plaintiff (herein appellant) against the impugned judgment and decree dated 23.08.2017, vide which learned trial Court dismissed the “suit for possession by partition” filed by appellant/plaintiff against the defendants (herein respondents).

2. The brief facts of case of appellant/plaintiff is that Jatt Ram @ Jattu Ram, Sukhdayal, Harkishan Lal, Ramesh Lal @ Ramesh and Hans Raj

sons of Shri Nanak Chand son of Shri Gehna Ram all residents of village Shahpur Begu were the owners of 2 Kanals 14 Marlas of land of Sq. No. 106 Killa No. 9/1 (2-14), situated in the area of village Shahpur Begu, Tehsil and District Sirsa (hereinafter called the suit land) and they were so recorded in revenue records from the year 1972-73 to 1997-98. Jatt Ram etc. aforesaid five owners sold away 2 Kanals 4 Marlas of land out of their aforesaid 2 Kanals 14 Marlas of Sq. No. 106 Killa No. 9/1 to Dinesh Kumar etc. (8 persons in all) through registered sale deed dated 02.06.2004 registered in the office of Sub-Registrar, Sirsa at Sr. No. 2998 on 02.06.2004 for which mutation no. 7728 was duly sanctioned in favour of the purchasers. However while sanctioning mutation no.7728 the area sold to Dinesh Kumar etc. purchasers is shown as 2 Kanals 14 Marlas. Dinesh Kumar etc. purchasers, however, transferred 15 Marla of land out of Sq. No. 106 Killa No. 9/1 (2-14) to Smt. Usha wife of Shri Sant Parkash, resident of Sirsa through registered sale deed dated 28.02.2005 for which mutation no.7913 was sanctioned in favour of Smt Usha. This killa No.9/1 of Sq. No.106 was also divided into 2 parts i.e. Killa No. 9/1/1 (1-19) and Killa No.9/1/2 (0-15) by the revenue officer at the time of sanctioning of mutation no.7913. Since Dinesh Kumar etc. were wrongly shown as owners of 2 Kanals 14 Marlas of land in the revenue record, therefore, after transfer of this 15 Marla of land to Smt. Usha Rani, they were recorded owners of balance of 1 Kanal 19 Marlas of land of Killa No.9/1/1 in Jamabandi for the year 2007-08. Since Dinesh Kumar etc. had purchased only 2 Kanals 4 Marlas of land from Jatt Ram etc.,

therefore, after sale of 15 Marlas of land, they remained the owners of only 1 Kanal 9 Marlas which as aforesaid after division of the killa falls in Killa No.9/1/1 and they were wrongly shown to be owners of 1 Kanal 19 Marlas of land of this Killa no.9/1/1. This mistake occurring in the revenue record was subsequently detected and a Fard Badar No.7 was prepared by the Patwari in the year 2014 which was verified by the Kanungo and was accepted by Tehsildar on 18.3.2014 and vide this Fard Badar Jatt Ram etc. are recorded owners of 70/351 share in the balance of 1 Kanal 19 Marlas of land of Sq. No.106 Killa No.9/1/1. Jatt Ram etc. who were the owners of 70/351 share have sold away their entire 70/351 share to the plaintiff through registered sale deed dated 12.12.2014 registered in the office of Sub-Registrar, Sirsa at Sr. No. 6916 on 12.12.2014. Mutation No.11686 of change of ownership has also been sanctioned in favour of the plaintiff in the year 2015 with the result that the plaintiff is recorded owner of 70/351 share in land measuring 1 Kanal 19 Marlas of Sq.No.106 Killa No.9/1/1. Hence, he filed the suit before Learned Civil Judge.

3. Upon notice by Learned Civil Judge, defendant No.12 filed written statement taking certain preliminary objections of cause of action, locus-standi, estoppel and suit being time barred etc. On merits, the defendant pleaded that as a matter of fact and in reality the defendants purchased area measuring 4 Kanals in Sq.No. 79 killa no. 22 bounded as East- Street 22'x66', West- Road 66', North- Street 4 Karam wide 338'-7", South- Remaining area of the owners 319'. The area was under the

possession of Madhu Sudan Bansal son of Shri Babu Ram, appearing as GPA of Dinesh Kumar, Raj Kumar, Vijender Kumar, Surender Kumar, Rakesh Kumar, Smt. Mamta Devi, Smt. Seema Devi and Smt.Krishana Devi. Smt.Geeta Rani wife of Shri Ashok Kumar purchased the said area through registered sale deed No. 6541 dated 25.10.2005. Thereafter Smt. Geeta Rani sold the said area measuring 3 Kanal 19 Marlas 5 Sarsai in favour of the defendants through registered sale deed No.17213 dated 08.11.2011. The name of the defendants has also incorporated in the revenue record and other record as per their possession. Since 2011 the defendant are enjoying the lawful possession of the area as an owner. The plaintiff has no concern with the area under the lawful possession of defendants. The plaintiff may have his purchase part of area on the opposite directions i.e. 2nd part of the total property not near the area of defendants. Denying other averments of the plaintiff, prayer was made to dismiss the suit.

4. The other defendants were summoned through publication, but none appeared. Thus, they were proceeded against ex-parte by learned trial court vide order dated 18.04.2016.

5. From the pleadings of the parties, learned trial court framed the following issues vide order dated 17.08.2016:-

1. Whether the plaintiff is entitled to a decree for possession as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable?OPD.
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the instant suit?OPD
5. Relief.

6. In order to prove his case, plaintiff Sachin Nanda examined himself as PW1, who has deposed by way of affidavit Ex.PW1/A in-verbatim to his pleadings as mentioned in para no.2 above.

Following documents were also tendered:-

Ex.P1 copy of jamabandi for the year 1997-98.
Ex. P2 Sale deed no. 2998 dated 02.06.2004.
Ex. P3 copy of Mutation no.7728 of village Shahpur Begu.
Ex.P4 copy of Sale deed no.10800 dated 28.02.2005.
Ex. P5 copy of Mutation no.7913 of village Shahpur Begu.
Ex. P6 copy of jamabandi for the year 2007-2008.
Ex. P7 Rapat of Patwari.
Ex. P8 copy of Sale deed no.6916 dated 12.12.2014.
Ex. P9 copy of Mutation no. 11686 of village Shahpur Begu.

7. On the other hand the defendants examined Anita Rani (defendant no.12) as DW1, who has deposed by way of affidavit Ex.DW1/A in verbatim to their pleadings as mentioned in para no.3 above.

Following documents were tendered:-

Ex. D1 copy of Sale deed No.6541 dated 20.10.2005.
Ex. D2 copy of Sale deed No.17213 dated 08.11.2011.
Ex.D3 copy of Mutation no. 9458 of village Shahpur Begu.

8. In rebuttal evidence, the plaintiff tendered copy of jamabandi for the year 2012-2013 as Ex.P10.

9. After hearing learned counsel for the parties and evaluating material on record, learned Trial Court vide impugned judgment and decree dated 23.08.2017 dismissed the suit of plaintiff. Feeling aggrieved thereof, the appellant/plaintiff has filed the present civil appeal.

10. I have heard Shri Y.P.Nanda, Advocate, counsel for appellant and Shri Ravinder Monga, Advocate, counsel for respondent No.12 and gone

through the Trial Court record.

11. Ld. Counsel for appellant/plaintiff submitted that Ld. Civil Judge wrongly dismissed his suit without appreciating the facts & evidence on record. He pointed out that appellant/plaintiff Sachin Nanda is owner of 7 Marlas 7 Sarsain vide sale deed no.6915 dated 12.12.2014 Ex.P8 and mutation in this regard vide no.11686 sanctioned on 09.01.2015 is Ex.P9, wherein ownership was entered in his name with respect to Rect. No.106 (9/1/1) measuring 1 Kanal 19 marlas to the extent of 70/351 share. He further pointed out that jamabandi for the year 2017-18 which also reflects his name as share holder to the extent of 70/351 share in Rect. No.106 (9/1/1) measuring 1 Kanal 19 marlas. He further pointed out that as per jamabandi for the year 2017-18, all the defendants along with appellant/plaintiff Sachin Nanda are shown as co-sharers to the extent of their shares as mentioned in jamabandi for the year 2017-18 and accordingly, he asserted that on the basis of prima-facie revenue record, preliminary decree for partition should have been passed by Ld. Civil Judge. He further argued that question of including all the ancestral land comprised in various kitta numbers and rectangle numbers of Jatt Ram etc or their vendees is not required as the appellant/plaintiff is seeking partition only with respect to the share purchased by him vide sale deed Ex.P8 with subsequent mutation entry Ex.P9 and the share reflected in the jamabandi for the year 2017-2018. He further argued that share of appellant/ plaintiff can be segregated from the other co-sharers in Sq. No.106 Killa No.9/1/1. Prayer was accordingly made

to set aside the impugned judgment & decree by allowing the present civil appeal.

12. On the other hand, Ld. Counsel for respondents/defendants submitted that Ld. Civil Judge rightly dismissed the suit filed by appellant/plaintiff as he has not impleaded all the co-sharers and all the properties of previous owners Jatt Ram etc or their vendees. He further argued that partial partition of the land by was not including all the rectangles and impleading all the co-sharers is not maintainable. He further stressed that even otherwise Jat Ram etc. were not having any agricultural land on ground level to sell the same to appellant/ plaintiff Sachin Nanda, as the roads were carved out before selling the plots and thus, Jat Ram etc. had no right to sell any plot to appellant/plaintiff vide sale deed Ex.P8 on the basis of remaining revenue entry, without there being a vacant land at spot. Prayer was accordingly made to dismiss the present civil appeal being devoid of any merit.

13. After hearing the rival submissions, I have given my thoughtful consideration to the same. At present, there is nothing on record to doubt that the appellant/plaintiff Sachin Nanda is co-sharer to the extent of 70/351 share in Rect. No.106 Killa no.9/1/1 total measuring 1 Kanal 19 marlas i.e. to the extent of 7 Marlas 7 Sarsain, which was purchased by him vide sale deed Ex.P8. Thus, suit can be prima-facie decreed to the extent of 70/351 share in said Rect. And Killa number, subject to the issue of remaining land on spot with Jatt Ram etc. at the time of execution of sale deed Ex.P8 in favour of appellant/plaintiff, as at present there is nothing on record to show

that any roads were carved out of the said piece of land comprised in Rect.No.106 Kill No.9/1/1. However, if at the time of preparing final partition amongst the co-sharers, it comes to the knowledge of the revenue authorities that road is also carved out of Rect. No.109 Killa No.9/1/1, measuring 1 Kanal 19 marlas and no land was left with Jat Ram etc. at the time of execution of sale deed Ex.P8, then in that situation, appellant/plaintiff will not be entitled for any share, as they have no right to claim proportionate share in the said piece of suit land being last purchaser. It is clarified that all the co-sharers/vendees will be entitled to share in the suit land on the basis of date of execution of sale deed, but not proportionately.

14. In sequel to my above discussion, present civil appeal is hereby disposed off with above directions. Both the parties shall bear their own costs. Preliminary decree be prepared accordingly. Trial Court record be sent back together with a copy of this judgment. Appeal file be consigned to records after due compliance.

DISPOSED OFF.

Announced in open Court
DATED: 07.08.2021.

Jitender Kumar,
Executive Assistant.

RAJESH MALHOTRA,
DISTRICT JUDGE,
SIRSA.
(UID No.HR0059)

Note:- All the pages checked & signed by me.

Rajesh Malhotra,
District Judge,
Sirsa,
(UID No.HR0059)