

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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RSA-1567-2023 (O&M)**Date of decision: 13.05.2026****Raj Kumar through his LRs****...appellants(s)****Vs.****Bal Kishan through his LRs and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ranjit Saini, Advocate
for the appellants.

NIDHI GUPTA, J.

The plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the appellants for declaration with consequential relief of joint possession, has been dismissed by both the District Courts.

2. Brief facts of the case are that plaintiffs had filed a present suit seeking a decree for declaration that defendant no.1 has no right of ownership over the suit land; nor defendant no.1 was competent to transfer the suit land in favour of the defendant no.2 in connivance of defendant no.3; and the plaintiff is owner of suit land; with a consequential relief of a decree for joint possession of the suit land.

3. It was the pleaded case of the plaintiff that he was owner of the suit land comprising in khewat no. 318/1, total kittas-28, measuring 145K-13m and khewat no. 319/1, total kittas- 54, measuring 285K-4M and



of the share 27/2913 in khewat no.318/1 and 53/5704 in khewat no. 319/1 as per the jamabandi for the year 2004-05 of village Bal Rangran, District Karnal (hereinafter referred as suit property). It was further averred that plaintiff is joint owner alongwith other co-sharers in two khewats i.e. 318/1 and 319/1; which khewat numbers subsequently obtained new status of khewat nos. 318 and 319 respectively. Defendant No.1 was shown as gair marausi under the present plaintiffs in old khewat nos. 301 and 303 and he was in possession of area measuring 4K-13M as gair marausi. Vide registered Sale Deed dated 21.12.2004 defendant No.1 had purchased the said land measuring 4K-13M from the plaintiff for Rs.1,37,500/-. In the said Sale Deed, it was specifically mentioned that defendant No.1 has taken possession of rect. no. 115, killa no. 25 min south (4-0) and 16/2(0-13) where he is already in possession being gair marausi. It was further pleaded that defendant No.1 is still in cultivating physical possession of the said land. However, due to change of khewats, name and status of defendant No.1 is again reflected in new khewats i.e. khewat No. 318 and 319 respectively. It was contended that in actual fact, defendant No.1 had no right or title to the said land except which was purchased by him from the plaintiffs. Even status of defendant No.1 shown as joint owner was incorrect. However taking advantage of the wrong revenue entries, defendant No.1 had sold land measuring 4K to defendant No2 vide Sale Deed No. 609/1 dated 05.08.2010 Ex.P1; wherein the area of total land, which has been sold is not mentioned and only share in khewat No. 318/1 and 319/1 has been mentioned. Even



possession of any specific portion has not been delivered by defendant No.1 vide said Sale Deed. It is only mentioned that share of defendant No.1 as gair marusi, which has been purchased by defendant No.1 from the plaintiffs vide Sale Deed dated 21.12.2004 has been sold. Plaintiffs had made requests to defendants not to declare themselves as owners of the property and not to take forcible possession however, to no avail. Hence, the present suit was filed on 30.09.2011.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Assandh (Karnal) had dismissed the suit of the plaintiffs vide judgment and decree dated 28.01.2016. The Civil Appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, Karnal vide judgment and decree dated 23.01.2023. Hence, the present second appeal by the plaintiffs.

5. It is *inter alia* submitted by learned counsel for the appellants that learned District Courts were in error in non-suiting the appellants as they failed to appreciate that admittedly, defendant No.1 was recorded in the revenue record as gair marusi tenant over the specific Khasra number of land which was sold by the plaintiff to defendant no.1. Obviously, the land which was in possession of the defendant no.1 was sold to him and no other land. Thus, in the peculiar facts and circumstances even if the defendant no.1 was in possession of the land out of the joint land but was in possession of specific khasra number as gair marusi tenant and in these circumstances after purchasing those Khasra numbers, he cannot become



the co-sharer in whole of the land. Both the District Courts have not gone into the peculiar facts resulting into mis-carriage of justice.

6. It is further submitted by learned counsel for the appellants that there is no dispute about the law laid down by this Court that even if specific land is purchased out of the joint land the purchaser would become co-sharer in whole of the land. However, the law laid down by this Court as well as the Hon'ble Supreme Court cannot be made applicable in the present case being distinguishable because the present case is not a case of sale from one co-sharer to another but a sale of the gair mumkin tenancy which was on specific numbers and was sold to defendant no.1. Thus the defendant no.1 cannot be said to be co-sharer in whole of the land alongwith other co-sharer as a specific land where defendant no.1 was co-sharer was sold to him.

7. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

8. No other argument is raised on behalf of learned counsel for the appellants. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellants/plaintiffs.

9. On a Court query, learned counsel for the appellants has admitted that vide Sale Deed No. 1027/1 dated 21.12.2004 Ex.P2, appellants had sold land measuring 4K-13M to the defendant No.1. Learned counsel for the appellants has not shown anything to this Court from which



it may be inferred that only tenancy of specific numbers of khata had been sold to the defendant No.1 vide Sale Deed dated 21.12.2004. Despite Court query Id. Counsel for the appellants has been unable to point out any such averments in the plaint or show that any evidence to this effect has been led by the appellant. In fact, in the plaint itself, it has been specifically mentioned that *“The defendant No.1 purchased the above said land measuring 4K-13M from plaintiff vide registered Sale Deed dated 21.12.2004 (wrongly mentioned as 2.12.2004) for Rs.1,37,500/-.”*

10. Consequentially, upon purchase of land vide Sale Deed dated 21.12.2004 Ex.P2, defendant No.1 had become co-sharer in the entire suit land; which is admitted to be joint in nature. It is established position in law that co-sharer has interest in whole property and possession of all.

11. Keeping in view the above facts, defendant No.1 was well within his legal rights to further sell the suit property to the extent of his share. It has been admitted in the plaint; as well by learned counsel for the appellants that defendant No.1 has not sold more than his share; and has only sold different khasra numbers.

12. Relevant findings of learned Civil Judge (Junior Division), Assandh are contained in para 13 of the judgment dated 28.01.2016. The relevant extract of which reads as under: -

“13. Now the main question of controversy is whether vide sale deed dated 21.12.2004 Bal Kishan has become owner of specific killa number i.e. killa number 16/2(0-13) and 25 only or whether he became a co-sharer in concerned khewats. For determining this question, a minute reading of sale deed dated 21.12.2004 is required. A perusal of sale deed Ex.P-2 shows that there is a recital of selling of



land measuring 4K-13M by vendor Raj Kumar to vendee Bal Kishan and in later part, there is recital about possession to the effect that possession is established on land comprised in muraba no. 115, killa no. 25 min and 16/2 which are already with vendee in the capacity of gair marausi. There is no specific recital in the sale deed that only these two killa numbers have been sold and the vendee will not claim any right or title over the remaining killa number of concerned khewats. In other words, vide sale deed Ex.P-2 the land measuring 4K-13M from khewat no. 301 and 303 has been sold. It is an admitted fact that khewat no. 301 and 303 were joint at the time of execution of Ex.P-2 and Raj Kumar was a co-sharer in these khewats. It is well settled law that a vendee will step into shoes of vendor and have all rights and liabilities which the vendor had. Raj Kumar was a co-sharer in these khewats and on the basis of Ex.P-2 Bal Kishan became co-sharer in the land. Even mutation no. 12208 which was entered and sanctioned on the basis of sale deed Ex.P-2 clearly shows that vide these sales deed vendee Bal Kishan got ownership of a share in the concerned khewats."

13. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.

14. In view of the above admitted position, I find no ground is made out for interference in the impugned judgments and decrees of the District Courts. The present Regular Second Appeal is hereby **dismissed**.

15. Pending applications, if any, stand disposed of.

13.05.2026

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No