

(2013) 07 P&H CK 0863

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3196 of 1987 (O and M)

Avtar Singh (deceased through his LRs.) APPELLANT

Vs

The Financial Commissioner (Appeals) and Others RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 172 PLR 217 : (2013) 4 RCR(Civil) 249

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Harsh Aggarwal, for the Appellant; Ranbir Singh Pathania, DAG, Punjab, Mr. Sanjay Majethia and Mr. N.C. Kinra, Advocate for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition challenges the order passed by the Financial Commissioner directing that in partition proceedings before the authorities, there had been issue of title and that therefore the matter would require to be examined afresh. The Financial Commissioner was accepting the contention of the respondent that the question of title will be decided by the Assistant Collector, 1st Grade either himself by sitting as a Civil Court or declining to proceed with for taking a decision on partition and allow for a civil court adjudication. The challenge to the first order was subjected to an application for review before the Financial Commissioner, but it was dismissed. The dismissal of the review petition and the order passed originally come up for challenge come by means of this writ petition under the following circumstances. The petitioner claimed himself to be a purchaser of a 1/3rd share from one Pritam Singh. Admittedly, the 5th respondent, who is the private contesting respondent was the brother of Pritam Singh and they had yet another brother, who had another 1/3rd share. The total extent of property which the three brothers was 59 kanals 10 marlas of land. The petitioner claimed as a purchaser through a sale deed executed by Pritam Singh on 21.04.1977 through a registered instrument in

respect of 19 kanals 17 marlas which represented, according to the petitioner, a 1/3rd share.

2. After the purchase, non-alienating co-owner Amar Singh, 5th respondent herein filed a suit for an injunction before the Sub Judge, 2nd class, Tarn Taran in Civil Suit No. 220 of 1980. His contention was that his possession must be protected and he was apprehending dispossession at the hands of Avtar Singh, the present petitioner. The petitioner, who was the defendant in that case, contended in suit that he had purchased 1/3rd share from Pritam Singh by a sale deed 21.04.1977 and he had also actually taken possession of the property. After framing a question of whether the plaintiff was in possession of the property and another issue whether he was entitled to injunction, the Court held as follows:-

In these circumstances, it is proved on the record that the defendant has purchased the share of Pritam Singh in the joint khata but the defendant has failed to produce any documentary evidence to establish his possession over the disputed land. From the perusal of the jamabandi Ex. P1 and Khasra girdwari Ex. P2, it is established on the record that the plaintiff is in possession of the suit land as a co-sharer. The defendant is also proved to have purchased the share of Pritam Singh vide registered sale deed Ex. D. 1. Pritam Singh vendor had 1/3 share in the joint khata and he was competent to sell his share of his land to any person of his choice but the defendant cannot oust the plaintiff from the suit land forcibly and otherwise than in due course of law.

3. The Court had a legal imperative to find whether the defendant was a purchaser from one of his brothers as claimed by him and it was not merely incidental but necessary legal obligation in order to find whether the plaintiff could maintain an action for injunction. Therefore when the Court was finding that the purchaser from one of the brothers had to file his own suit for partition was acknowledging the truth of the defence that was taken up by the defendant in the suit, who was the present petitioner.

4. The application for partition had come about before the Assistant Collector, 1st grade in 1982 u/s 11 of the Punjab Land Revenue Act. Objection had been called for and it appears that the 5th respondent, who was shown as the respondent, contended that Pritam Singh had actually sold of his land to him vide an agreement of sale, dated 24.05.1964. The Assistant Collector rejected this objection as having been brought at the belated stage and he found that the partition khatauni had actually been prepared as per the revenue record and so the objection regarding the alleged agreement from Pritam Singh cannot be countenanced. This order was maintained successively by the Collector through his order dated 27.02.1984 and still later by the Commissioner by his order dated 18.01.1985. On a further revision to the Financial Commissioner, he took up what was rejected by the first authority, namely, of an alleged agreement by Pritam Singh in favour of Amar Singh and that therefore there arose a question of title.

5. The learned counsel for the petitioner points out that even apart from the decree for injunction granted in favour of Amar Singh (5th respondent) acknowledging the document of purchase by the petitioner and his entitlement to apply for a partition, he had resorted to yet another suit for an injunction in the year 1985 simultaneously when he was prosecuting a revision before the Financial Commissioner. The suit instituted by him in Civil Suit No. 197 of 1985 before the Sub Judge, 1st class, Tarn Taran, on 13.06.1985 was decided on contest on 06.06.1986. The suit for injunction by Amar Singh was resisted by the petitioner again referring to the fact that even apart from the partition proceedings before the authorities, he had a sale in his favour and that it had been also referred to in the previous suit. The Court held in paragraph 7 as follows:-

7. The claim of the defendant that the land in suit on partition fell to his share and possession of the same as delivered to him stands proved from the statement of Avtar Singh defendant as DW 1 and copy of rapat Roznamcha dated 14.3.84 Ex. D-1 and copy of khasra girdwari Ex. D2. A perusal of copy of rapat roznamcha Ex. D-1 shows that possession of vacant land bearing khasra Nos. 161/17(8-0), 18/1/1(3-12), 24(8-0) was delivered to the defendant, while symbolical possession of khasra Nos. 161/24(8-0) was delivered to him in pursuance of order of partition. Thus, it stands proved on the record that land in suit was previously jointly owned by the parties and that on partition, it fell to the share of the defendant and possession of the same was delivered to him.

6. The Court had here in this case again a legal imperative to follow, namely, of a contention raised by the present petitioner as a defendant that he had become the owner of the property and that a relief of injunction cannot be granted in favour of Amar Singh. The suit was dismissed on 06.06.1986 and this had become final.

7. If in two independent civil court proceedings, sale deed had been referred to and adjudicated upon that would conclude the issue of title. The title of immovable property can be transferred only through a registered instrument in terms of Section 17 of the Registration Act. Any person who propounds an agreement of sale against a person, who holds a deed of sale sourcing him title to the very same vendor, the agreement holder cannot retain his possession in any manner other than how it is protected under the principles of Section 53A of the Transfer of Property Act. The title to the immovable property stands transferred under a registered document and if that right were to be in any event thwarted legally by a person, who holds an agreement of sale, it could be in the alternative by means of a suit for the specific performance, for, it is ultimately the registration of a document pursuant to an agreement that can validate title and allow for being used against yet another person, who was setting up a rival title. In any event, a mere reference to an agreement would have created no right at all for a person to raise a dispute on title. The Financial Commissioner was wholly wrong in failing to understand the legal import that the agreement of

sale cannot be set up against a person who holds a registered document, unless there was a plea for using the agreement as a shield u/s 53A of the Transfer of Property Act or through a decree that culminated in a decree of specific performance and later translated as a sale deed by court orders.

8. There has been faint argument on a contention raised in the written statement that Amar Singh had been in possession of the property under the agreement of sale from the year 1964 and he had also prescribed title to the property by adverse possession. This plea is equally untenable in law. An agreement-holder is a person in permissive occupation assuming that the person was put in possession under the agreement. An adverse possession commences in wrong and recognizes a hostile title against the owner. A person that enters into possession under a permission through an agreement can never prescribe title to the property by adverse possession. It has been settled by a decision of the Supreme Court in *Achal Reddi Vs. Ramakrishna Reddiar and Others*, that in executory contract such as an agreement of sale, the possession of transferee is permissive until the date of registration of the conveyance and there could be no adverse possession by an agreement holder.

9. The other line of contention which is taken up with passion before this Court is that the respondent has filed his written statement contending that the petitioner, who had obtained a mutation on the basis of sale deed suffered a set back when the mutation was cancelled. The learned senior counsel would argue that reference to the cancellation of mutation and a fresh mutation which was sanctioned in favour of the 5th respondent that had been made in the written statement, had not been contested again by the petitioner. According to him, the non-filing of the rejoinder to the written statement would amount to accepting the contention raised in the written statement. The counsel would also refer to a report alleged to have been prepared that the original mutation obtaining the revenue entries in favour of the petitioner was found by revenue authorities to have been obtained by fraud and this was also not denied by the petitioner. The fact of not filing a replication as amounting to admission of what is contained in the written statement is again untenable in law. This has been considered in several situations that non-filing of reply cannot lead to admission of what is stated in the written statement. A replication is a facilitative procedure which parties adopt to join issues for denying what is brought through a written statement. Normal understanding of law is always guided through Sections 101 to 105 of the Evidence Act. What the respondent asserts shall be established by him, no matter whether the petitioner denies it or not. This has been brought through a Division Bench of Madras High Court reported in *Veerasekhara Varmarayar Vs. Amirthavalliammal and Others*,

10. The reference to mutation entries in the name of the petitioner here is not very significant, for, the claim to partition which was approved by the Court was on the basis of not only the mutation, though it was referred to, but on the basis of the registered sale deed. If the partition could have been denied, it could have

been only at the instance of a person, who had a rival title to oppose. Here the issue of title had been concluded through civil court decision to which both were parties. Here the title which was pleaded by the respondent was under an alleged agreement of sale. I have already pointed out that an agreement of sale cannot be held out against a person having registered sale deed from the very same person from whom the respondent sources his claim under an agreement. It was not even referred to in the civil suit filed by the respondent.

11. The objection on the ground of title was a lame attempt on the part of the respondent to thwart that normal consequences of the order for partition which was approved by the authorities. In this case, there is a finding that subsequent to the orders passed by the Assistant Collector, as stood confirmed by the Collector and the Commissioner, the actual partition by metes and bounds had been taken and possession of the property had also handed over to the petitioner. If there are any legal formalities to be followed subsequent to this, it shall be carried to its logical end. The order of the Financial Commissioner directing the matter to be remanded was a needless attempt to give legitimacy to a previous objection taken by the respondent at all times and rejected for adequate and appropriate reasons. The order impugned passed by the Financial Commences is quashed and the writ petition is allowed with cost assessed at Rs. 10,000/- in favour of the petitioner.