
(1987) 10 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3037 of 1984

Hakam Singh (Deceased)

APPELLANT

Vs

Banta Singh and Others

RESPONDENT

Date of Decision : 30-10-1987

Acts Referred:

Specific Relief Act, 1877 — Section 6

Citation : (1987) 10 P&H CK 0073

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : K.S. Cheema, for the Appellant; D.N. Rampal, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This judgment will also dispose of Civil Revision Petition No. 489 of 1980, as the facts are common in both these cases.

2. Hakam Singh, Angrez Singh and Hazur Singh are the sons of Harnam Singh. They had one third share each in the suit land measuring 23 kanals 8 marks bearing khasra No. 1047. It is the common case of the parties that the said khasra No along with khasras Nos. 1027 and 1046, was sold vide sale deed dated June 1, 1978, Exhibit P.W.6/A, in favour of the Plaintiff Banta Singh and others by Angrez Singh and Hazur Singh only. According to the vendees, since the vendors were in exclusive possession of these khasra Nos they delivered possession to them at the time of sale. Rather, their case is that prior to the sale, the land consisting of these three khasras Nos was already mortgaged with them and, thus, they were in possession thereof. Hakam Singh, Appellant, claiming himself to be in exclusive possession of khasra Nos. 1047, measuring 23 kanals 8 marlas, filed a suit u/s 6 of the Specific Relief Act, (hereinafter called the Act), on December 5, 1978, against Banta Singh and others. That suit was contested by the Defendants The trial Court found therein as follows:

In the instant case also no doubt the Plaintiff could not prove his exclusive

possession over the suit land before his dispossession by the Defendants, he has certainly succeeded in proving that he was in its joint possession along with his brother Angrez Singh. Being in joint possession he must be held to be in physical possession of the whole of the suit land and thus the joint possession can be physically restored to him as it can be restored to the entire body of co-sharers.

In spite of this finding, that the Plaintiff was not in exclusive possession of the suit land, his suit u/s 6 of the Act was decreed on February 13, 1980. Aggrieved against the same Banta Singh and others have filed Civil Revision Petition No. 489 of 1980.

3. Later on Banta Singh and others, filed civil suit for the grant of the declaration that they were owners in possession of the land measuring 23 kanals 8 marlas bearing khasra No. 1047, with a consequential relief for the grant of the permanent injunction restraining Hakam Singh, Appellant, from dispossessing them in execution of the decree dated February 13, 1980, which is the subject matter of the above-said civil revision petition. The said suit was contested by Hakam Singh on the plea that the total land measuring 41 kanals 8 marlas was jointly owned by three brothers, but the land comprised in khasra No. 1047 was in his cultivating possession. Angrez Singh was not in possession thereof. According to him, the Plaintiffs were in illegal possession of the said khasra No. 1047 and, therefore, he had rightly filed the suit u/s 6 of the Act which was decreed. The trial Court found that the Defendant No. 2, Angrez Singh, entered into an agreement to mortgage dated October 14, 1976, in favour of the Plaintiffs, and the agreement to mortgage dated April 24, 1977, in favour of Banta Singh and Gurpiar Singh and put them into possession of the land. It further found that Angrez Singh and Hazur Singh sold 41 kanals and 4 marlas of land bearing khasras Nos. 1027, 1046 and 1047 to the Plaintiffs and they were competent to sell the same. In view of these findings, the Plaintiffs' suit was decreed. In appeal, the learned Additional District Judge affirmed the said findings of the trial Court and, thus, maintained the decree passed in favour of the Plaintiffs.

4. The learned Counsel for the Defendant-Appellant Hakam Singh submitted that the findings given in the earlier suit u/s 6 of the Act operated as *res judicata*. According to the learned Counsel, in that suit, it was found that Hakam Singh was in exclusive possession of khasra No. 1047 and, therefore, the same was binding in the present suit. In support of the contention, the learned Counsel relied upon *Raj Gopal Bhattacharji and Another Vs. Sarat Kumari Debi*, and *Hridayanath Ray Vs. Prabodhchandra Khan*. It was also contended that since Angrez Singh and Hakam Singh were not in exclusive possession of khasra No. 1047, the same could not be sold specifically in favour of Banta Singh and others.

5. On the other hand, the learned Counsel for the Plaintiffs-Respondents submitted that any finding given u/s 6 of the Act was not final, as it was in summary proceedings. In any case, argued the learned Counsel, in the earlier suit, it was never held that Hakam Singh was in exclusive possession of Khasra No. 1047 and, therefore, the suit was wrongly decreed. It was also contended

that even the said finding is also under challenge in the aforesaid civil revision petition. In support of the contention, reliance was placed by the learned Counsel on A.R.V. Achar Vs. Madras State and Another, and Laisram v. Miajan Mia AIR 1969 Man 49.

6. I have heard the learned Counsel for the parties and have also gone through the relevant evidence on the record.

7. In the suit u/s 6 of the Act, it was never held that Hakam Singh, Plaintiff in that suit, was in exclusive possession of Khasra No. 1047. The finding was recorded therein has already been reproduced in the earlier part of this judgment. Once it was held that Hakam Singh was not in exclusive possession of Khasra No. 1047, his suit u/s 6 as such could not be decreed.

8. It is no more disputed that Angrez Singh and Hazur Singh had one-thirds share each in the suit land and they had not sold land more than their shares to the Plaintiffs Banta Singh and others. Moreover, it has been further found by the Courts below that Angrez Singh was in possession of the suit land along with Hakam Singh. If that was so, then the question of dispossessing Hakam Singh forcibly by the vendees Banta Singh and others did not arise. The proper remedy for Hakam Singh was to get the suit land partitioned as no decree could be passed in his favour u/s 6 of the Act

9. Under the circumstances, this appeal fails and is dismissed whereas Civil Revision Petition No. 489 of 1980 is allowed. The decree of the trial Court is set aside and the suit is dismissed with no order as to costs.