
(2015) 02 P&H CK 0366

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1931 of 2014 (O & M)

Jai Bhagwan

APPELLANT

Vs

Teka and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35-A

Citation : (2015) 02 P&H CK 0366

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : Sandeep K. Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Jaspal Singh, J.

1. Delay condoned.

2. Unsuccessful plaintiff has preferred this appeal feeling dis-satisfied against judgment and decree dated October 26, 2013 passed by Additional District Judge, Rohtak in Civil Appeal No. 60 of 2011/2012 captioned as "Jai Bhagwan v. Teka and others", vide which, an appeal filed by plaintiff was dismissed whereby judgment and decree dated January 29, 2011 passed by learned trial court was affirmed.

3. Shorn off unnecessary details, facts giving rise to instant appeal are that plaintiff and defendants are descendants of Prem Sukh, a common ancestor, who owned agriculture land at villages Madina, Gindhran and Bibipur in the area of District Jind. Prem Sukh had two sons namely Nanak and Singh Ram. Nanak had three sons namely Harke, Piare and Siria, whereas, Singh Ram died issueless and unmarried. One of the sons of Nanak, namely, Piare also died issueless whereas Harke had one son namely Jug Lal. Siria had four sons namely Birkha, Munshi, Sanwalia and Jagar. Defendant Nos. 1 to 5 are legal heirs of Jug Lal and are residing at village Bibipur, whereas, plaintiff and defendant Nos. 6 to 17 are heirs

of Siria (deceased). As per entry in revenue record, suit land is owned by defendant Nos. 1 to 5, who initiated partition proceedings claiming themselves to be co-sharers. Instrument of partition (Sanad Taqseem) was issued by revenue authorities vide ex-parte order on July 31, 2006. Aggrieved against said order, plaintiff preferred an appeal before Collector and that appeal was dismissed vide order dated January 31, 2007. Revision petition preferred by plaintiff before Commissioner, Rohtak also met with same date as per order dated January 24, 2008. Both these orders have been challenged by plaintiff through instant suit.

4. It is further case of plaintiff that Harke son of Nanak abandoned village Madina during his life time, whereas, Siria abandoned village Bibipur. Mutation of abandonment of deceased Siria was incorporated and sanctioned in favour of Harke qua his share in agriculture land situated in village Bibipur. But, corresponding entries relating to abandonment of Harke qua his share in agriculture land located at village Madina were not got effected due to some inadvertence, though, his abandonment was final.

5. Suit has been hotly resisted by defendant Nos. 1 to 5 and 11 to 17 who appeared before learned trial court in response to notice issued to them and they filed written statement. Whereas, remaining defendants did not opt to contest and due to their non-appearance, they were proceeded against ex-parte. Written statement was filed by contesting defendants raising preliminary objections, inter-alia, on the grounds that suit is barred by time; that plaintiff is estopped from filing suit by his own act and conduct; and that suit is bad for non joinder of necessary parties. On merits, defendants, though, admitted themselves to be legal and natural heirs of Harke but pleaded that they are residents of both the villages i.e. Madina and Bibipur. It was specifically pleaded by them that though Siria had abandoned village Bibipur but Harke did not abandoned village Madina. Mutation of property owned by Harke was rightly sanctioned in favour of his son Jug Lal and after demise of Jug Lal to his heirs. Since, there was no abandonment by Harke of village Madina, mutation was neither incorporated nor sanctioned. Orders passed during partition proceedings of Khewat Nos. 232 and 233 have become final and conclusive which were upheld upto Commissioner level. All other averments have been denied by contesting defendants alleging the same to be wrong. They, accordingly, prayed for dismissal of suit in toto.

6. In order to settle the matter in controversy, following issues were framed by learned trial court:--

"1. Whether Sh. Harke and Siria had abandoned their villages as alleged? OPP

2. Whether any mutation of abandonment was sanctioned as alleged if so to what effect? OPP

3. Whether the impugned order dated 31.1.2007 and 24.1.2008 are liable to be set aside as alleged? OPP

4. Whether the suit of the plaintiff is not maintainable? OPD

5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the suit is liable to be dismissed with special costs under section 35-A CPC? OPD
7. Relief."
7. Both parties were afforded ample opportunities to adduce evidence who led oral as well as documentary evidence to substantiate their pleadings.
8. After hearing learned counsel for parties and appraisal of oral as well as documentary evidence adduced by parties in respect of their respective pleas, issue Nos. 1 to 3 were decided against plaintiff whereas issue Nos. 4 to 6 were decided in favour of contesting defendants and against plaintiff. Resultantly, suit filed by plaintiff was dismissed with special costs vide which impugned judgment and decree dated January 29, 2011.
9. Aggrieved against dismissal of suit vide judgment and decree, referred to above, plaintiff preferred Civil Appeal No. 60 of 2011/2012, that was also dismissed vide judgment and decree dated October 26, 2013 whereby judgment and decree rendered by learned trial court was affirmed.
10. Dis-heartened with dismissal of suit as well as that of appeal, plaintiff has come up with this appeal seeking reversal of both judgments and decrees passed by both the courts below and consequent decretal of suit.
11. While assailing impugned judgments and decrees as well as findings recorded by courts below on all the issues, it has been argued with vehemence by learned counsel for appellant - plaintiff that both the courts below have failed to appreciate and understand entire concept of abandonment.
12. There are two primary elements of abandonment i.e. (a) intention of abandonment; and (b) external act by which effect is given to intention. Both these elements must concur. Intention must be clear and unmistakable. Abandonment becomes complete if owner or co-owner of an estate abandons his estate in which the land is situated permanently with an intention not to return forever. In that eventuality, owner/co-owner loses his right over said land or estate and person who takes over abandoned land/estate, becomes owner of said land/estate.
13. While referring to facts of present case, learned counsel for appellant has contended that act of abandonment as well as act of taking over of abandoned estate by Harke and Siria was on reciprocal basis which stood complete during their life time. Accordingly, respective legal heirs have no right or title to estate abandoned by Harke and Siria. Though, mutation with regard to abandonment of estate left by Harke was incorporated and sanctioned but due to some inadvertence, mutation could not be incorporated and sanctioned in respect of abandonment of estate by Siria. Moreover, land was received by them in family settlement -cum- mutual partition. Once abandonment is proved, non-

sanctioning of mutation on the basis of abandonment of estate by Siria does not debar legal heirs of Harke to be owners of said property/estate, especially, circumstances that abandonment was reciprocal one by Harke and Siria.

14. Consequently, orders passed by revenue authorities which have been challenged through this litigation, are not sustainable in the eyes of law and deserve to be set aside holding that defendants in partition suit were not competent to get the land partitioned as they were no more owners thereof. There was a serious title dispute but without adjudicating upon the same, revenue court has proceeded with partition proceedings by ignoring settled principles of law. Findings returned by learned trial court, affirmed by lower appellate court are not sustainable and deserve to be reversed and in reversal of findings as well as impugned judgments and decrees, suit of appellant - plaintiff deserve to be decreed in toto. Since, there are substantial questions of law involved in instant appeal with regard to mis-appreciation of concept of abandonment as well as being result of non-appreciation or wrong appreciation of oral as well as documentary evidence, appeal deserves to be admitted for hearing.

15. This Court has given a deep thought to aforesaid submissions made by learned counsel appellant and has minutely scanned impugned judgments and decrees passed by both the courts below.

16. Through the suit, plaintiff has sought relief of declaration to the effect that plaintiff and defendant Nos. 6 to 17 are owners in possession of suit land and that, partition orders dated July 31, 2006, January 31, 2007 and January 24, 2008 are liable to be set aside being illegal, null and void, and having not binding upon their rights. There is no dispute with respect to relationship of plaintiff and defendants as well as that their common ancestor was Prem Sukh. Undoubtedly, mutation of abandonment of late Siria was incorporated and sanctioned in favour of Harke qua his share in agriculture land situated in revenue estate of village Bibipur whereas no mutation was incorporated or sanctioned on the basis of alleged abandonment of Harke qua his share in agriculture land located in village Madina. No plausible reason has been put-forth by learned counsel for appellant - plaintiff for non - incorporation of mutation or sanctioning thereof. Simple explanation given in this regard is that it could not be done due to some inadvertence but this Court does not find any substance in this submission made by learned counsel for appellant - plaintiff. No cogent or convincing evidence also could be brought on record by appellant - plaintiff with regard to alleged abandonment by Harke in favour of Siria.

17. Similarly, there is also no evidence what to talk of any cogent or convincing evidence to prove alleged family partition. Averments put-forth by appellant - plaintiff are absolutely against revenue record which depict defendant Nos. 1 to 5 to be owners in possession of property which was subject matter of partition proceedings.

18. Here it would be pertinent to mention that as per case of appellant - plaintiff, he as well as perma respondents came to know about revenue entries in the name of Teka - defendant No. 1 in the year 1977-1980 when compensation was allegedly disbursed on account of damages caused to crops due to heavy hail-storms. But, there is nothing on record to suggest as to why plaintiff and others who have approached the court in the year 2008, remained tight lipped for a period of approximately 30 years. So, in such circumstances, it can be safely concluded that non-initiation of proceedings immediately on coming to know of adverse entries for a period approximately 30 years debars plaintiff and others to challenge entries or partition proceedings.

19. Not only this, even Sanad Taqseem had already been issued on the basis of which possession to respective co-sharers have already been delivered. Partition is complete and has become final and conclusive. So, it can be said without any hesitation that this Court does not find any merit in various contentions canvassed by learned counsel for appellant. Firstly, there is no question of title involved as per above referred discussion. Secondly, there was no abandonment in estate by Harke. Thirdly, revenue authorities have already conducted proceedings which were competent to do so, including to decide the question of title. Thus, taking the case of appellant on any of the angles, this Court does not find any infirmity, illegality or impropriety in impugned judgments and decrees.

20. Accordingly, instant appeal is dismissed with no order as to costs.