(1969) 01 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 894 of 1965

Resham Singh and others APPELLANT

Vs

Paul Singh RESPONDENT

Date of Decision : 31-01-1969

Acts Referred:
Transfer of Property Act, 1882 — Section 41

Citation : (1969) 01 P&H CK 0007

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : K.C. Nayar, for the Appellant; Puran Chand, for the respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Shamsher Bahadur, J.—Resham Singh and his minor brothers Amrik Singh, Dalbir Singh and Daljit Singh brought a suit to enforce their right of possession of one-sixth of the land measuring 31 Kanals 14 Marias in village Bhin of Nawanshahr Tehsil, sold to them in pursuance of a sale deed of 16th of April, 1962, by the fourth defendant Gurchain Singh. This parcel of land was taken into forcible possession by the first three defendants, Paul Singh, Ajit Singh and Nirmal Singh, who contested the suit of the plaintiffs.

2. Land measuring 31 Kanals 14 Marias belonged originally to Muslim owners Sardar Ali and Haidar Khan who by two separate deeds had mortgaged it with possession in favour of Gurchain Singh, defendant No. 4, half share; Babu Singh, father of defendants 2 and 3, two-fifths share and one Attra one-tenth share. After the partition the land came to be dealt with by the Competent Officer as it was composite property within the meaning of the Evacuee Interest (Separation) Act. The mortgagees made their claims before this authority and in the open auction the bidding closed in favour of Gurchain Singh and Babu Singh. In the order of the Competent Officer, Jullundur of 30th of January, 1954 (Exhibit P. 5), it was stated that Babu Singh and Gurchain Singh had preferred the claim which

had been admitted by the Custodian in respect of this composite property. The mortgage deed, according to this order, shows that the shares in the mortgaged land were as follows:

(1) Gurchain Singh - one-half

(2) Babu Singh - two-fifths

(3) Attra - one-tenth.

Attra mortgagee never submitted any claim to the competent Authority. The proportionate amounts due to the claimant-mortgagees were computed by this authority in Exhibit P. 5. We are not actually concerned with the amounts determined, but it has to be borne in mind that the share of Gurchain Singh was one-half while Babu Singh''s share was two-fifths. They were required to make the requisite deposits of proclamation and publicity charges.

3. We have next the orders of the District Competent Officer, Jullundur, of 25th of February, 1957 relating to the two-mortgages (Exhibits P. 4 and P. 6). It is mentioned that the land had been sold by the auctioneers Bhardwaj and Company, and M/S Adarsh Property Dealers, Jullundur, on 28th of November, 1956 and 13th January 1967. The mortgagees themselves gave the highest bid which being in excess of the reserve price was accepted. The sale was confirmed. In one case the sale was for Rs. 1200/- and in the other for Rs. 2025/-. The calculations were made on the basis which had been indicated in the aforesaid orders. Towards the end, it was mentioned that Babu Singh having died, his sons Jit Singh and Nirmal Singh, defendants 2 and 3 became his representatives.

4. By a sale-deed of 28th of May, 1960 (Exhibit P. 8), defendants 2 and 3, describing themselves as sons of Babu Singh, purported to sell half-share of the land measuring 31 Kanals 14 Marias to the sons of Pal Singh, the first defendant, for a sum of Rs. 3500/-. Two years later on 16th of April, 1962, Gurchain Singh the fourth defendant, also purported to sell half-share of the same land for Rs. 4000/- to the plaintiffs. The plaintiffs obtained possession of this half-share but later one-sixth of it was taken into forcible possession by the first defendant and this stirred them into action by bringing the present suit on 8th of October, 1963.

5. The contesting defendants 1 to 3 have raised various pleas and the principal plank of the defendants is that Gurchain Singh, Jit Singh and Nirmal Singh as mortgages of the evacuee interest had purchased the land in equal shares. In other words. Gurchain Singh had one-third share of 31 Kanals and 14 Marias of land while Jit Singh and Nirmal Singh between themselves had the remaining two-thirds share, being equal owners of one-third share each. The price, according to them, was similarly paid in equal shares. Only three of the seven issues which were framed on the pleadings of the parties need be mentioned for purposes of the controversy which survives for decision in this appeal:

(1) Whether the plaintiffs are the owners of one-sixth share in the suit property?

(4) Whether defendants Nos. 2 and 3 were competent to sell one-sixth share in the property in dispute?

(5) Whether defendant No. 4 sold one-half share in the property in favour of the plaintiffs? If so to what effect?

6. The learned trial Judge found these issues in favour of the plaintiffs and decreed their suit for possession on 30th of October, 1964. The Senior Subordinate Judge in appeal preferred by the defendant Pal Singh, however, took a different view and allowing the appeal the learned Judge dismissed the suit of the plaintiffs with costs.

7. Before me in second appeal of the plaintiffs, the whole dispute turns on the question whether the mortgagee rights in the agricultural land were acquired by defendants 2, 3 and 4 equally, or in proportion to their shares of the mortgagee rights between Gurchain Singh on the one hand and Babu Singh on the other. The documents, to which I have already adverted, make it abundantly clear that Jit Singh and Nirmal Singh had stepped into the shoes of their father Babu Singh who had only two-fifths share in the suit property, less than the half-share of Gurchain Singh. It has been strenuously contended by Mr. Puran Chand, the learned counsel for the respondent Pal Singh, that the essential documents to reach this conclusion have not been produced by the plaintiffs and have been intentionally withheld. It is submitted that the bidding list has not been produced and their is no certainty that the purchasers did not acquire the shares equally. The submission takes no account of the admitted contents of Exhibits P. 4 to P. 6. Four matters are made clear in these documents:

1. The share of Gurchain Singh was one-half and that of Babu Singh two-fifths.

2. At the time when the bids were accepted, Babu Singh had died and had been succeeded by his sons Jit Singh and Nirmal Singh who were shown as representatives of their deceased father in Exhibits P. 4. and P. 6.

3. The bidding was made jointly by the mortgagees. 4 The amounts which were to be deposited by the mortgagees and paid to them represented the proportions of one-half and two-fifths for the plaintiffs and the second and third defendants.

8. The lower appellate Court seems to have been influenced by the contents of the latest Jamabandi of 1959-60 in which Gurchain Singh, Jit Singh and Nirmal Singh are shown to be the owners of the land in dispute in equal shares, each of them having one-third share in Khatauni Nos. 392 and 393 relating to the suit. It is, however, to be borne in to mind that in the earlier Jamabandi of 1955-56 (Exhibit P. 3) Gurchain Singh is shown to be the owner of one-half land while Babu Singh and Attar are shown in possession of two-fifths and one-tenth shares respectively. No doubt, a presumption of correctness attaches to the entries in the record of rights, but they are not the foundations of title. Jamabandis, like any other record-of-rights, are a mere item of evidence which has to be considered. Moreover, as held by a Division Bench of this Court (Bhandari C.J.

and Khosla J.) in Kanwar A. Ahmed Khan v. The Union of India (1954) 56 P.L.R. 468:

A presumption of correctness attaches to entries appearing in the record of rights but such entries are mere items of evidence. The presumption raised by them is not conclusive, but prima facie merely, and whilst it must prevail where there is no rebutting evidence, it may be repelled by other evidence, and circumstances showing that the entries are not correct.

There is no material available to show how the earlier entry of 1955-56 came to be altered by the Jamabandi of 1959-60. Documents Exhibit P. 4 to P. 6 also show that the position had been maintained till the end of 1957. In the sale-deed executed in favour of the plaintiffs by Gurchain Singh there is a recital that one-half share of 31 Kanals and 14 Marias of land was being sold. It is also to be observed that the plaintiffs purchased the suit land for Rs. 4000/- which is higher than the price paid by the first defendant. If the plaintiffs had in fact bought one-third share, and not one-half, the price would have been much less. It is also clear from the statement of Gurchain Singh as P.W. 3 that payments were made and properties exchanged in accordance with one-half share. It may be that the sale-deed in favour of the first defendant also discloses that one-half share of the land belonging to defendants 2 and 3 was being sold, but looking at the entire documentary evidence, the conclusion is inescapable that the proportion of the holding of mortgaged land of Gurchain Singh on the one hand and Babu Singh on other remained unchanged. When both parties have led evidence, it is irrelevant to argue that the onus of the material issue was on the plaintiffs and they have failed to discharge it. The documents of title in favour of the plaintiffs have not been taken account of by the lower appellate court and the findings of this Court which are no doubt of fact suffer from this vital defect. As was held by a Division Bench of Dulat and Capoor JJ. in Gurbinder Singh v. Lal Singh (1956) 60 P.L.R. 528:

If advantage is to be taken of the rule contained in section 41 of the Transfer of Property Act. it is not enough to show that the transferee was acting in good faith or had paid valuable consideration, but it has further to be proved that the ostensible owner had become such owner with the express or implied consent of the true owners.

9. The plea of the first defendant that he was a bona fide purchaser for value is not of much significance as defendants'' 2 and 3 purported to sell property which did not belong to them. The plaintiffs have been in legitimate possession of land which has been sold to them. The forcible dispossession in respect of one-sixth share is unjustifiable and, in plain contravention of the plaintiffs'' legal rights.

10. In my opinion, the suit was rightly decreed by the trial Judge whose judgment and decree I would restore and set aside those of the lower appellate Court. The appeal of the plaintiffs is allowed with costs.

11. I do not see any reason to accede to the oral request of Mr. Puran Chand for

the grant of a certificate to file a letters patent appeal.

