

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

**Regular Second Appeal No.1607 of 2012 (O&M)
Date of Decision: September 02, 2015.**

Karam Singh and others

.....APPELLANT(s).

VERSUS

Jagir Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Cooner, Advocate
for the appellant (s).

Mr. Kamal Chaudhary, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondent No.1.

Mr. Sanjay Dhiman, Advocate
for respondent No.2.

SURINDER GUPTA, J.

This is second regular appeal against the concurrent findings of the Courts below whereby suit filed by Jagir Singh plaintiff (now respondent in this appeal) seeking relief of separate possession by way of partition of the land bearing khewat/khatoni No.76min, khatoni No.101min, khasra No.25//2/2/2(4-11), 3/2(1-9) measuring 6 kanals situated in village Naya Gaon alias Khaddar, H.B. No.24 Tehsil and District Panchkula, was decreed and the appellants-defendants were restrained from alienating the suit land or raising further construction on land more than their share till its partition.

(In later part of this judgment, the parties will be referred as plaintiff and defendants as per the civil suit filed by them).

Jagir Singh plaintiff filed suit with the averments that he had purchased land in dispute vide sale deed No.588, Bahi No.1 dated 30.01.2003 for a sale consideration of ₹70,000/- from Surinder Nath son of Sardara Singh. On the basis of this sale deed, mutation No.927 dated 5.2.2003 was duly sanctioned and thereafter he raised construction upto DPC level over the area adjoining the road, of which possession was delivered to him by the vendor. The land in dispute was joint with the other co-sharers and the same was partitioned by virtue of order dated 10.07.2002 and had come to the share of Surinder Nath. As per mutation No.982 sanctioned on 15.12.1982, the defendants who were also the vendees of Surinder Nath, have also raised construction abutting the road and 'Gohar' over the land more than their share. They also threatened to raise further construction over the valuable portion of the suit land and the plaintiff filed suit for permanent injunction, wherein he was allowed the relief of interim injunction vide order dated 11.02.2002. The request was made to the defendants to partition the suit land by metes and bounds but they refused, hence, this suit.

The defendants contested the claim of the plaintiff with averments that Surinder Nath had sold entire share of his land in village Naya Gaon to the defendants prior to the sale in favour of plaintiff on 30.01.2003. After the sale of land in favour of defendants, Surinder Nath was left with no other land in village Naya Gaon, as such, any sale deed executed by him in favour of plaintiff does not confer any right in favour of vendee. It was denied that plaintiff and defendants are joint owners or in joint possession of the suit land and Assistant Collector 2nd Grade had no

jurisdiction to transfer share of one cosharer of one village to his share in other village. The defendants have raised construction of their houses and shelter of animals on the specific portions of the suit land which was purchased by them from Surinder Nath vide different sale deeds wherein the dimensions and boundaries of the land sold to them were specifically mentioned.

The Court of Civil Judge (Senior Division), Panchkula decreed the suit with the observations in para 10 of the judgment which reads as follows:-

“Having due regards to the contentions raised by learned counsel for the parties, the contentions of learned counsels for the defendants cannot be accepted because in the present case, plaintiff has sought partition of the suit land on the ground that he is co-sharer with defendant Nos.1 to 6 and is in joint possession of the suit land. The plaintiff had purchased the share in the suit land by way of sale deed dated 30.1.2003 Ex.P1 for valuable sale consideration of ₹70,000/- from said Surinder Nath son of Sardara Singh and in this regard, mutation No.927 Ex.P8/1 was sanctioned in his favour. A perusal of Ex.P8/A clearly goes to show that mutation of 108th share was sanctioned in favour of the plaintiff. Further, perusal of mutation No.922 Ex.P2 goes to show that defendants had purchased the land from Surinder Nath and after purchasing some share from Surinder Nath, as is evidence from various sale deeds Ex.D1 to Ex.D4 executed in favour of defendant Nos.1 to 6 by said Surinder Nath, 108th share out of total 360th share was left with Surinder Nath. Karam Singh had purchased 38th share, Gurbax Singh had purchased 22nd share, another Karam Singh had

purchased 56th share, Ranjit Singh had purchased 20th share, another Gurbax Singh purchased 49th share, Smt. Kamla Devi purchased 20th share and Smt. Surinder Kaur purchased 20th share and thus, it is clear from the perusal of Ex.P2 that said Surinder Nath along with defendant Nos. 1 to 6 was co-sharer of the total suit land measuring 6 kanals 0 marlas situated in village Naya Gaon @ Khaddar. As stated above, 108th share which was left after selling out the land by said Surinder Nath had sold out various shares to plaintiff as well as to defendant Nos.1 to 6 at different times. Thus, plaintiff and defendants Nos.1 to 6 have derived their title from said Surinder Nath who was having his 360th share before selling out the land to different defendants. As far as the arguments of learned counsel for the defendants with regard to the effect that Assistant Collector 2nd Grade, Barwala was not having any right to combine the land of two villages is concerned, the same cannot be raised in this suit as Surinder Nath who was co-sharer with other persons may file an appeal before appropriate forum or he can raise objection before the concerned revenue authorities.”

Not satisfied, the defendants filed appeal before the additional District Judge, Panchkula, which was dismissed vide judgment and decree dated 22.12.2011.

Learned counsel for the appellants-defendants has argued that Surinder Nath earlier sold his entire land in village Naya Gaon to the defendants. It was at some later stage, he was allotted some other land in partition proceedings with these cosharers and his share of land in village Naya Gaon swelled. This fact is under challenge before the revenue

authorities. It was further argued that the suit land is having khasra numbers and revenue record and as such, the civil Court has no right to order its partition.

It is not disputed that the parties had purchased specific portions of the land of Surinder Nath. The trial Court in para 10 of its judgment has described the share of each of the plaintiff and defendant in the suit land which is not disputed. It is also not disputed that the entire suit land is having construction because the defendants have come up with the plea that they have raised construction of houses and shelter for animals over the suit land. The mere fact that the suit land is still recorded in the revenue record as agricultural land, in no manner divest the civil Court of jurisdiction to allow partition of the suit land.

As to whether Surinder Nath could be allotted land in the partition proceedings in Naya Gaon by the revenue authorities is not a subject matter which the appellant could challenge. They are concerned only with the land purchased by them. The Courts below have accepted their shares in the suit land and they could not claim more than that shares. Being a cosharer, plaintiff was competent to seek the partition of the land and to have separate possession of his share by metes and bounds.

On perusal of the paper book and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

(SURINDER GUPTA)
JUDGE

September 02, 2015.

Sachin M.