

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.416 of 2012

Date of Decision: September 16, 2015

Navdeep & another

...Appellants

Versus

Khushal Chand

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Vijay Kumar Jindal, Senior Advocate with
Mr.Amardeep Sheoran, Advocate,
for the appellants.

Mr.J.R.Mittal, Senior Advocate with
Mr.Kashish Garg, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the impugned judgment and decree dated 16.11.2011 passed by the Lower Appellate Court, whereby the appeal filed by the respondent-defendant against the judgment and decree dated 11.5.2011 passed by the trial Court, has been accepted and the suit has been dismissed.

Mr.Vijay Kumar Jindal, learned Senior Advocate assisted by Mr.Amardeep Sheoran, Advocate, appearing on behalf of the appellant-plaintiffs submits that by virtue of the sale deed dated 8.11.1993, land

measuring 5 kanals 3 marlas out of Khewat No.67, Killa No.4 was sold to the respondent-defendant. The revenue record reflects that the parties were in exclusive possession of their respective shares, inasmuch as that Khewat No.67 consisting of Khasra No.4/2 (5-3) is in possession of the respondent-defendant, whereas Khewat No.67, Khasra No.4/1 (1-6) is in the ownership of the appellant-plaintiffs and they are also owner of Khewat No.67, Khasra No.7/1 (2-11).

He further submits that in October, 2005, the respondent-defendant, stated to have encroached upon the area and in this regard, an application for demarcation of the property was submitted. A report regarding excess area was sought and as per the report, the respondent-defendant has been found to be in possession of excess area and, therefore, the trial Court rightly decreed the suit. However, the Lower Appellate Court, ignored the jamabandies (Ex.P4, Ex.P5 and Ex.D1), which show that the parties to the lis are/were in exclusive possession of their respective Khewat and killa numbers, thus, the property is deemed to have been partitioned, thus, there is illegality and perversity in the finding that the property had not been partitioned and even the demarcation report was not found to be in accordance with law, therefore, the appeal involves the substantial questions of law.

Mr.J.R.Mittal, learned Senior Advocate assisted by Mr.Kashish Garg, Advocate, appearing on behalf of the respondent-defendant submits that the demarcation report (Ex.P2) has demolished the case of the appellant-plaintiffs, inasmuch as that, as per the said report, various other persons other than, the defendant are stated to have been in possession of

the area and they have not been arrayed or impleaded and, thus, the suit was not maintainable and rightly so, dismissed by the Lower Appellate Court.

The Lower Appellate Court, on the basis of the oral and documentary evidence found, that there was no order of partition and, therefore, in the absence of the same, simply by relying upon the jamabandis (Exs.P4 and P-5), the private arrangement could not be termed as a partition in accordance with law. He further submits that no substantial question of law arises in the present case and the appeal may be dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

PW-3 Parminder Singh, in his cross-examination, admitted that there is no order of partition nor the same is reflected in the revenue record. Section 123 of the Punjab Land Revenue Act prescribes that in case there is a partition, then the order of partition has to be reflected in the jamabandi. The private arrangement between the parties cannot be considered a valid ground that the parties have partitioned their respective khasra numbers, particularly when the khewat is joint. The khewat in the present case is 67, which is still joint. In order to lend support to the aforementioned observation, I rely upon the findings rendered in Paras 21 and 22 of the judgment rendered by the Full Bench of this Court in **Ram Chander Versus Bhim Singh & others and Rohtash Singh & another Versus Ram Niwas & others, 2008(3) R.C.R. (Civil) 685**. The same read thus:-

“21. As a result of the above discussion, we express our complete agreement with the opinion, recorded in the Full Bench in Bhartu vs Ram Sarup's case (supra) and are sanguine in our understanding of the law so as to hold that the Full

Bench judgment in Lachhman Singh's case (supra) does not lay down the correct position in law, as while considering the rights of a vendor/co-sharer, flowing from his status as a co-sharer/joint owner, the Full Bench in Lachhman Singh's case (supra) disregarded the nature of joint property and the status of joint owners, and placed undue significance upon artificial divisions of land, made by revenue authorities intended to identify land, namely: rectangle numbers, killa/khasra numbers etc.

22. *Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and Killa numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner. A holding may be divided into different Khewats, Khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint owners or co-sharers, the land would comprise of a Khewat or khewats, different khataunis, rectangles and/or khasra/killas numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killas numbers. Division of land into different rectangles, khasra or killas numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by placing undue*

reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat.

In view of the aforementioned ratio decidendi culled out in **Ram Chander's case (supra)** and unclenching evidence brought on record coupled with statement of PW-3, it is borne out that the khewat is still joint and, therefore, the property cannot be said to have been partitioned between the parties despite the fact that they are in exclusive possession.

In my view, the findings rendered by the Lower Appellate Court that, the suit for possession was not maintainable in the absence of partition, do not suffer from any illegality and perversity.

The contention that once the respondent-defendant has admitted that there is a partition, the documentary evidence would not prevail upon the admission. Such contention, in my view, is not tenable as it is totally contrary to the ratio decidendi culled by the Full Bench.

The ratio decidendi culled out in **Balwinder Singh and others Versus Prem Singh and others, 2006(2) RCR (Civil) 394** would not apply to the facts and circumstances of the present case as the khewat is still joint and the private arrangement between the parties would not brand such arrangement as partition, even the admission of the defendant, would not clothe the nature and character of the khewat to be separate.

There is another aspect of the matter. The Kanungo has not conducted the demarcation report by giving any notice to the parties concerned as no copy of the notices has been placed on record. The report

of the Kanungo reveals that he has not taken into consideration the measurements of the land mentioned at the back of Ex.D2. There are already instructions issued by the Financial Commissioner for guidance of the revenue officers to dispose of the cases and as well as for the purpose of carrying out the demarcation of the boundaries at the spot. The report of the Kanungo is not in accordance with the instructions, as it is lacking requirement, inasmuch that he did not follow the square system while demarcating the site.

The Lower Appellate Court, while relying upon the instructions issued by the Financial Commissioner, found that the report of the Kanungo was not in accordance with the instructions and, therefore, discarded the report. Such findings, in my view, do not suffer from misdirection, illegality, much less perversity.

I do not find any illegality in the findings rendered by the Lower Appellate Court, whereby the appeal of the respondent-defendant has been accepted and the suit has been dismissed. The Lower Appellate Court, being the last Court of fact and law, has discussed the entire evidence, both oral and documentary.

In view of what has been observed above, no substantial question of law arises in the present appeal. The same is accordingly dismissed.

September 16, 2015
ramesh

(AMIT RAWAL)
JUDGE