

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.639 of 2012 (O&M)

Date of Decision: 19.08.2015

Gurdev Kaur

.....Appellant

Versus

Kiranjeet Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Aman Bansal, Advocate,
for appellant.

Mr. Rajbir Singh, Advocate,
for the respondent.

SHEKHER DHAWAN, J

Present regular second appeal is against judgment and decree dated 16.08.2011 whereby first Appellate Court accepted the appeal and set aside the judgment and decree dated 17.05.2008.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However relevant facts for the purpose of decision of present appeal that plaintiff Kiranjeet Singh had filed suit for possession against the defendant on suit land on the ground that

plaintiff was illegally dispossessed by the defendant. Plaintiff also claimed mesne profit to the tune of Rs.5,250/-. As per plaintiffs, suit land was purchased from Jangir Kaur vide registered sale deed dated 31.05.2005 and possession was delivered to him by vendor Jangir Kaur on the spot. Mutation No.27286/A was sanctioned in favour of the plaintiff. Defendant has no concern with the suit property but forcibly encroached upon the suit land of the plaintiff. Later on plaintiff got the demarcation of the suit land done from Kanungo on 09.12.2005 and from the report it was evident that defendant encroached upon the land belonging to plaintiff. Request was made by plaintiff to the defendant not to sow next seasonal crop but to no effect and as such suit before Court of first instance.

4. Defendant took the plea that Shiam Kaur (since deceased) mother of defendant had purchased the land from Joginder Kaur vide registered sale deed No.361 dated 03.06.1980 and the possession was given to him by Joginder kaur. Mutation No.25082/A dated 28.08.2000 was sanctioned in favour of defendant and since then defendant is in possession of the suit land. Plaintiff is not entitled to any mesne profit and suit for possession deserve dismissal.

5. On these facts Court of first instance settled the issues and after recording of evidence and appreciating thereof returned the findings that suit land was earlier sold by Joginder Kaur to Shiam Kaur vide registered sale deed dated 03.06.1980 which was prior to the sale deed No.849 dated 31.05.2005 executed by Jangir Kaur in favour of the plaintiff. On the date of sale deed in favour of the plaintiff i.e. 31.05.2005, mother of defendant had already purchased the suit property from a co-sharer Joginder Kaur and had taken the possession thereof. So the plaintiff failed to prove his case

and as such suit of the plaintiff was dismissed.

6. Plaintiff preferred first appeal and the Court of First Appeal returned the findings that original co-owners namely Bhagwant Kaur, Sadhu Singh, Jangir Kaur and Joginder Kaur admitted partition which was effected on 24.08.1986 and copy of the same is Exhibit P-5 on the record. Thereafter khasra No.122/7/2 (2 kanals, 9 marlas) fell to the share of Jangir Kaur and Kiranjeet Singh had purchased the same from her and as such plaintiff is entitled to possession of said khasra No.122/7/2 (2 kanals, 9 marlas) situated in revenue estate of Sangrur and Court of first instance wrongly dismissed the suit of the present appellant. Defendant Gurdev Kaur could not forcibly get the land which was earlier purchased by the plaintiff.

7. Learned counsel for appellant-defendant took the plea that land was purchased and the same was a sale of share only. Joginder Kaur had sold the land to the extent of her share. There are no findings by Courts below that the sale was more than the share. As regard to the partition dated 24.08.1986, the same partition is invalid as in fact appellant-defendant is in possession of the suit land. First Appellate Court reversed the well reasoned judgment of Court of first instance and as such the present appeal be accepted and the judgment of Court of first instance be maintained.

8. While arguing on these points learned counsel for respondent took the plea that no mutation was sanctioned on the basis of sale deed Exhibit D-1 of 1980 till 2000. More so no mutation was sanctioned till 2000. As per Jamabandi Exhibit P-8 for the year 1984-85 and as per partition dated 24.08.1986 private partition had taken place and rapat was recorded and mutation Exhibit P-7 was sanctioned. Exhibit P-1 is the

demarcation report on the file. Court of first appeal has already taken all these aspects into consideration while setting aside the judgment and decree dated 17.05.2008 passed by Civil Judge, Junior Division, Sangrur. Hence, the present appeal is without any merit and same be dismissed.

9. Having considered the submissions made by learned counsel for both the parties, this Court is of the considered view that Court of first appeal has rightly set aside the judgment and decree dated 17.05.2008 passed by Civil Judge, Junior Division, Sangrur as the same are without any basis and contrary to the evidence available on record. Court of first appeal had rightly returned the findings that private partition had in fact taken place amongst the joint owners namely Smt. Bhagwant Kaur, Sadhu Singh, Jangir Kaur and Joginder Kaur. On the basis of said private partition Exhibit P-5 i.e. Rapat Roznamcha Wakiati was recorded. Main dispute is regarding khasra No.122/7 and the said khasra number had fallen to the share of Joginder Kaur on the basis of private partition Exhibit P-5. Plaintiff had purchased the suit land bearing khasra No.122/7 from Jangir Kaur and remaining portion of 122/7 was of Smt. Joginder Kaur. The private partition was duly implemented in the revenue record by way of entries in the Jamabandies as well which has got a presumption of truth and correctness attached to the same. Mutation was also sanctioned on the basis of Rapat Roznamcha dated 24.08.1986 and copy of mutation Exhibit P-7 on the file. Jangir Kaur had sold land measuring 19 kanals one marla to Smt. Shiam Kaur vide sale deed Exhibit D-1 but at that time entire khasra No.122/7 was not sold. Joginder Kaur was not the exclusive owner of entire khasra No.122/7 and as such she was not competent for sale of above mentioned khasra number. Private partition was admitted by the original

owner and entries were duly recorded in the revenue record. The Court of first instance returned these findings, which are based on facts of the case, evidence available on file and correct legal preposition.

10. In view of the above present Regular Second Appeal being without any merit and stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 19, 2015
msd