

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

**RSA No.1092 of 2013 (O&M)
Date of decision : August 05, 2015**

Rajinder Pal Singh

.....Appellant

Versus

Pirithi Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Kamal Narula, Advocate
for the appellant.

Mr. I.S. Dhaliwal, Advocate
for respondent No.1.

Mr. G.S. Saini, Advocate
for respondent No.2.

GURMIT RAM, J.

1. This Regular Second Appeal is preferred by the appellant herein (plaintiff) against the judgment and decree dated 01.12.2011 passed by the Court of learned Civil Judge (Senior Division), Ferozepur vide which the suit of the plaintiff for declaration and permanent injunction was dismissed with costs; and judgment and decree dated 19.10.2012 passed by the Court of learned Additional District Judge, Ferozepur vide which the appeal preferred against the abovesaid judgment and decree of the trial

Court was also dismissed with costs.

2. The case of the appellant herein (plaintiff) before the learned trial Court in brief was that previously his father Malkiat Singh was the co-owner in the entire land in dispute. After his death, the appellant entered into the possession of this land and is in its cultivating possession. On 10.06.2004, respondent No.1 herein (defendant No.1) executed a sale deed in favour of respondent No.2 herein (defendant No.2) regarding the entire suit land. In the said sale deed it was recorded that respondent No.1 is a co-owner of the land measuring 1 kanal 7 marlas i.e. (1/6 share) in the land bearing Khasra No.83/25min (8-0). The main grievance of the appellant herein (plaintiff) in this suit was that the abovesaid respondent No.1-herein (defendant No.1) had delivered the possession of the land measuring 4 kanals out of abovesaid land bearing khasra No.83/25min, while he was holding only 1/6 share in the land of that khasra number i.e. 1 kanal 7 marlas. The said act on the part of respondent No.1 herein (defendant No.1) is stated to be wrong as well as illegal. Even the appellant has also lodged a criminal complaint against him and others, which is stated to be pending in the Court of Judicial Magistrate Ist Class, Ferozepur. Now the defendants were threatening to dispossess the appellant from the land measuring 4 kanals comprised of khasra No.83/25min illegally and forcibly. Hence was the instant suit.

3. On notice, respondent No.1-herein (defendant No.1) admitted that Malkiat Singh was co-owner of suit land. It is further his contention that prior to the execution of the abovesaid sale deed dated 10.06.2004, the answering respondent No.1-herein (defendant No.1) was in exclusive possession of the land measuring 4 kanals comprising in khasra

No.83/25min (8-0) under family arrangement/settlement and as such, he delivered the possession of this land to respondent No.2-herein (defendant No.2) at the time of execution of the said sale deed.

4. Respondent No.2-herein (defendant No.2) took preliminary objections in the written statement that suit in the present form is not maintainable; that appellant-herein (plaintiff) has not come to the Court with clean hands and that this suit has been filed just to harass him. This respondent/defendant also reiterated the stand that respondent No.1-herein (defendant No.1) was in possession of the land in dispute and as such, its possession was delivered to him by respondent No.1-herein (defendant No.1) at the time of execution and registration of the aforesaid sale deed. Now he is in cultivating possession of this land. Rest of the averments were denied by both the respondents/defendants.

5. Learned trial Court after hearing learned counsel for both the parties and going through the record as well, dismissed the suit of the plaintiff vide the impugned judgment and decree dated 01.12.2011. Appeal preferred by the plaintiff against this judgment and decree was also dismissed by the learned Appellate Authority vide impugned judgment and decree dated 19.10.2012.

6. The appellant/plaintiff being not satisfied with the findings recorded by both the Courts below have come up before this Court by way of instant appeal, notice of which was given to the respondents. Record of both the Courts below was also requisitioned.

7. Counsel for both the parties were heard and record was also perused with their eminent assistance.

8. It is an admitted fact that respondent No.1/defendant No.1 was

having 1 kanal 7 marlas land only i.e. 1/6 share in the land bearing khasra No.83/25min (8-0) and that he was also having land measuring 2 kanals 13 marlas i.e. 53/704 share out of land bearing khasra No.1101 measuring 35 kanals 4 marlas. So as such he was having 4 kanals land in both the abovesaid khasra numbers and consequently the land sold by him vide sale deed Ex.P1 was held to be within his share.

9. The only grievance of the present appellant against the respondents is that respondent No.1 was having a share to the extent of 1 kanal 7 marlas land in the land bearing khasra No.83/25min measuring 8 kanals and whereas he had delivered the possession of the land measuring 4 kanals out of the land of this khasra number, i.e. more than his share. Sale deed Ex.P1 shows that the land of both the khasra numbers mentioned in it is still joint amongst the co-owners. If the appellant-herein (plaintiff) has any grievance with regard to the delivery of possession of land measuring 4 kanals by respondent No.1-herein (defendant No.1) to respondent No.2-herein (defendant No.2) out of khasra No.83/25min, then the remedy available with him is to seek partition as permissible under the law.

10. Then the appellant also failed to bring on the record any documentary evidence to show that he was in exclusive possession of the entire land measuring 8 kanals of abovesaid khasra No.83/25min. Then on the other hand, the respondents/defendants placed on the record a copy of *Jamabandi* Ex.D1 for the year 2006-07. In this *Jamabandhi*, respondent No.2-herein (defendant No.2) is shown to be in cultivating possession of the land bearing khasra No.83/25min to the extent of 5 kanals 7 marlas as a co-sharer and this entry is also further depicted in the copy of khasra girdawari Ex.D2 for the year *Kharif*-2010. Then there is also copy of the order of

Assistant Collector IInd Grade, Ferozepur dated 30.05.2007 Ex.D3 vide which the *khasra girdawari* was corrected in the name of respondent No.2-herein (defendant No.2) in respect of land measuring 5 kanals 7 marlas which includes the land in dispute comprised in khasra No.83/25min. So as such, the *khasra girdawari* of the land in dispute was corrected in favour respondent No.2-herein (defendant No.2) prior to the filing of the instant suit on his plea of being in its cultivating possession.

11. So in the light of above discussion, there is nothing wrong in the impugned judgments and decrees passed by both the Courts below. This appeal being devoid of any merits stands dismissed and disposed of accordingly. Parties are left to bear their own costs.

Record of both the Courts below be sent to the quarter concerned along with copy of this judgment.

August 05, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE