

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

**Regular Second Appeal No.2661 of 2013 (O&M)
Date of Decision: December 15, 2015.**

Ajaib Singh and others

.....APPELLANT(s).

VERSUS

Rajinder Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harsha Aggarwal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This second appeal has been filed by legal heirs of Shamsher Singh, defendant No.1 against the concurrent judgments of the Courts below whereby plaintiffs-respondents No.1 and 2 were declared as joint owner in possession of the suit land along with defendants and mutation No.15345 dated 14.10.1991 entered on the basis of order passed by Assistant Collector Ist Grade, Jagraon dated 28.06.1991 was set aside.

2. The case of the plaintiffs Rajinder Singh and Manmohan Singh, in brief, is that the parties to the suit were joint owners in possession of the suit land. Shamsher Singh, defendant No.1 obtained an ex parte order dated 28.06.1991 from Assistant Collector 1st Grade, Jagraon for partition of the suit land and got sanctioned impugned mutation No.15345 dated 14.1.1991.

Plaintiff No.2 Manmohan Singh and defendant No.5 Gurmail Singh filed

appeal against the order dated 28.06.1991 which was accepted vide order dated 23.01.1992. The order dated 28.06.1981 passed by Assistant Collector 1st Grade was set aside and case was remanded for fresh decision. In the meantime, Raikot Sub Division came into existence and the case was transferred to Assistant Collector 1st Grade, Raikot for hearing. On 14.01.1993, Shamsheer Singh through his counsel made statement and withdrew the application seeking partition of the land, which was allowed. In this manner, partition proceedings came to an end without any final decision. However, mutation No.15345 dated 14.10.1991 based on the order of partition dated 28.06.1991 continued in the revenue record and the application was moved by the plaintiffs before the Assistant Collector 1st Grade Raikot to set aside the impugned mutation but he did not entertain the same. On the strength of impugned mutation, defendants No.1 to 3 and 7 to 13 were claiming the partition of the suit land resulting in filing of the suit.

3. Defendant No.1 contested the claim of plaintiffs inter-alia pleading that the land in dispute had already been partitioned and the cosharers have been recorded as owners of their separate shares in the revenue record. The partition proceedings under the order of Assistant Collector dated 28.06.1991 were finalised and the order of Collector, Jagraon setting aside the order of Assistant Collector 1st Grade was without jurisdiction, null and void. The plaintiffs, if so desire, could re-open the partition proceedings before the Assistant Collector 1st Grade, Raikot but have not approached him.

4. On merits, learned counsel for the appellants after detailed arguments had to concede the fact that the land in dispute is still joint of the

parties as the partition proceedings initiated by Shamsheer Singh were withdrawn after the remand of the case by the Appellate Authority. Consequently, mutation No.15345 dated 14.10.1991 based on the order dated 28.06.1991, which has since been set aside, is also rendered infructuous and loses its very existence in the eyes of law. Counsel for the appellant has raised three legal plea while challenging the judgment and decree passed by the Court below which are enumerated as follows:-

- (i) The suit is barred under Order 2 Rule 2 CPC.
- (ii) The suit was not maintainable under Section 158(6) of Punjab Land Revenue Act.
- (iii) The suit was liable to be dismissed as plaintiff had filed the suit against Jiwan Kaur, who had already died at the time of filing of the suit.

5. On perusal of the judgments of the Courts below, I find that the above submissions of learned counsel for the appellants have no merits. Learned Additional Civil Judge while considering the argument that the suit of the plaintiffs is barred under Order 2 Rule 2 CPC has observe in para 15 as follows:-

“15. A perusal of the documents placed on file, on behalf of the defendants from Ex. D1 to Ex. D6 show that some other land is also joint between the two parties, but the present suit has been filed by the plaintiffs, only regarding the land of Village Bassian and the property of Raikot, has not been included in the present suit. A perusal of the documents proved on file, on behalf of the defendants shows that earlier also, a suit was filed by the plaintiffs, against the defendants Sher Singh, Jaswinder Singh etc. and that suit of the plaintiff was decreed but in

the present suit, besides these four defendants, other co-sharers are also impleaded as party. The present suit has been filed, regarding the land at village Bassian, whereas earlier suit was filed regarding the land at Raikot. Since the co-sharers in the present suit and the earlier suit, are different and even land described in the present suit and the earlier suit is different, as such, provisions of Order 2 Rule 2 CPC are not attracted in the present case and accordingly, this issue is being decided as against the defendants and in favour of the plaintiffs.”

6. The above argument of learned counsel for the appellants were also dealt with in detail by the first Appellate Court and rightly discarded. The filing of suit by plaintiffs regarding the land at village Raikot which has lesser number of co-sharers, than in the suit land, and on altogether separate cause of action, relating to the property situated in village Bassian, is not barred under Order 2 Rule 2 CPC.

7. The plaintiffs are seeking the declaration that the suit land situated at village Bassian, Tehsil Raikot is joint property of the parties. The suit is not barred under Section 158 of Punjab Land Revenue Act. The correction of the entry in the revenue record will be out come of the judgment and decree passed in this suit. The suit, in fact, relates to the title of the parties and both the Courts below have committed no error or law while deciding the title and holding the plaintiff as joint owners and in joint possession of the suit land, as such, this suit is not barred under Section 158 Punjab Land Revenue Act.

8. This argument of learned counsel for the appellants that the suit was filed against Jiwan Kaur, who had already died, as such, was bad in the

eyes of law against her, also has no merits as before the Courts below, Jagjit Kaur daughter of Jiwan Kaur was a party who had appeared and admitted the claim of the plaintiffs. Even if, there was some omission in impleading a proper party, the same was rectified.

9. In view of my above discussion, no substantial question of law requiring determination arises in this appeal, which has no merits.

10. Dismissed.

December 15, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE