

In the High Court of Punjab and Haryana at Chandigarh

120/2

RSA-1112-2015 (O&M)

Date of decision:13.10.2015

SHAMSHER SINGH

.....Appellant

Versus

GURMEET SINGH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.A.S.Manaise, Advocate,
for the appellant.

- 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?*

Raj Mohan Singh, J.

1. Plaintiffs-respondents No.1 and 2 filed a suit for exclusive possession on the ground that the suit land is joint property of the parties and they are co-sharers in the land. Parties are using the suit land as per their own shares. Defendant No.1 constructed a house in 10 marla land out suit property without the consent of other co-sharers and without getting the suit land partitioned. Plaintiffs further alleged that there was oral partition in respect of land situated within *lal lakir* of the village but no partition ever took place in respect of agricultural land. They are in possession over khasra No.13//1/1 (3-6) and defendant No.1 is trying to dispossess them. Even the application for partition at the instance of plaintiffs is pending

before Assistant Collector, Ist Grade, Ropar.

2. Defendant No.1 filed counter claim. The suit filed by the said defendant for permanent injunction is statedly pending and even the suit for partition at the instance of defendant is also pending before the Civil Court.

3. Learned counsel for the appellant-defendant No.1 states that the suit is in respect of houses and not in respect of agricultural land. He further alleged that the plaintiffs have conveniently concealed these litigations, therefore, suit is barred by Order 2 Rule 2 CPC.

4. Family partition has been pleaded wherein, Gurmit Singh, plaintiff No.2, left his share in favour of defendant No.1 and defendant No.1 left his share in khasra No. 8//25/3 (1-4) and 12//5/2 (1-1).

5. After necessary pleadings and evidence on record, trial Court, vide judgment and decree dated 5.7.2014, dismissed the suit filed by plaintiffs and decreed the counter claim filed by defendant No.1 to hold that counter claimant/ defendant No.1 is absolute owner of share of Gurmit Singh (plaintiff No.2) in khasra No. 13//1/1 (3-6) and accordingly permanent injunction was granted in his favour. Apparently, the decision of the trial Court was based on the plea of exchange of these khasra numbers on account of family partition.

6. Gurmit Singh, plaintiff No.2, feeling aggrieved with the

decision of the trial Court, filed two appeals before the lower Appellate Court. The lower Appellate Court took notice of the fact that as per latest revenue record, the factum of alleged family partition has not been given effect in the revenue record. The latest jamabandi shows the parties to be joint owners of the land.

7. In view of aforesaid, the lower Appellate Court, vide judgment and decree dated 11.12.2014, accepted the appeals, and held that the trial Court has committed grave error in presuming partition contrary to factual position in the revenue record. Hence, it was held that defendant No.1 will get his share in khasra No. 8//25/3 (1-4) and 12//5/2 (1-1) and Gurmit Singh will get his share in khasra No. 13//1/1 (3-6) as per latest jamabandi.

8. Since factum of providing partition has not been proved on record nor the same has been given effect in the revenue record, therefore, in considered opinion of this Court, the judgment and decree passed by the lower Appellate court cannot be faulted with any jurisdictional error or having suffered with any perversity on account of misreading of evidence.

Accordingly, this appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

October 13, 2015
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