

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

**RSA No.5093 of 2013 (O&M)**

**Date of decision: 03.08.2015**

**Dalip Singh**

**.....Appellant**

**Versus**

**Bawa Singh and others**

**.....Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Jagjit Singh, Advocate,  
for the appellant.

**Ritu Bahri, J.**

This appeal has been filed against the judgments dated 17.10.2008 and 04.03.2013 passed by the Additional Civil Judge (Senior Division), Kapurthala and the Additional District Judge, Kapurthala, whereby suit filed by the plaintiff-appellant for partition and permanent injunction has been dismissed.

Dalip Singh-plaintiff (appellant herein) filed a suit alleging therein that previously the suit property was owned and possessed by Kahna son of Jodha and after his death, his six sons had inherited the same. Jawala Singh, father of the plaintiff-appellant had got 1/6<sup>th</sup> share in the suit property. After the death of Jawala Singh, suit property was inherited by his three sons namely Dalip Singh-plaintiff and his brothers Munsha Singh and Partap Singh to the extent of 1/6<sup>th</sup> share. Partap Singh died unmarried and issueless and his share devolved upon the plaintiff and Munsha Singh. As per plaintiff, the suit property was vacant plot/taur and had not been partitioned

between the parties. However, defendant Nos. 1 to 8 were alleging

themselves to be exclusive owners of the suit property. Defendant Nos. 2 to 8 were claiming to have purchased the suit property from Sadhu Singh, Bawa Singh sons of Thakar Singh, Gian Singh son of Banta Singh, Hari Singh son of Bhagat Singh, Malkiat Singh son of Nand Singh and Achhar Singh son of Bura. They were trying to dispossess the plaintiff from the suit property illegally and forcibly.

Upon notice, Bawa Singh-defendant No.1 filed written statement by stating therein that the suit property had fallen to his share in a family settlement and the plaintiff was not in possession over any part of the suit property. It was further stated that the suit was collusive between the plaintiff and defendant Nos. 4 to 8. It was admitted that plaintiff was grandson of Kahna and the land in dispute was situated within the *Lal Lakir* of village Biharipur.

Defendant Nos.4 and 5 had filed separate written statement taking preliminary objections with regard to maintainability of the suit, non-joinder and mis-joinder of necessary parties, locus-standi, suit being bad for partial partition, jurisdiction etc. On merits, it was denied that the suit property was previously owned and possessed by Kahna, as alleged. It was also denied that Partap Singh had died unmarried and issueless and after his death, his share had been devolved upon the plaintiff. It was further denied that the plaintiff was co-sharer to the extent of 1/12 share in the suit property. It was stated that Sadhu Singh, Bawa Singh sons of Thakur Singh son of Vir Singh, Gian Singh son of Banta Singh, Hari Singh son of Bhagat Singh, Malkiat Singh son of Nand Singh and Achhar Singh son of Boora were owner of land measuring 7 Marlas towards the house of defendant No.4, who sold the same to Jagat Singh, Saudagar Singh sons of Makhan Singh

death of Jagat Singh, defendant Nos. 4 and 5 were in possession over 7 Marlas of property. Besides this, Jagat Singh had purchased a plot measuring 1 Marla from Jit Singh, Sewa Singh sons of Ishar Singh vide writing dated 09.03.1976. Hence, defendant No.4 was in actual possession over 8 Marlas of land. All other allegations made in the plaint were denied and a prayer for dismissal of the suit was made.

Trial Court, after going through the evidence led by the parties, dismissed the suit. The lower appellate Court affirmed the findings of the trial Court and dismissed the appeal. Hence, this appeal.

Copy of plaint in a civil suit filed by Bawa Singh had been proved as Ex.PX, wherein he had claimed 1/6<sup>th</sup> share in the vacant plot/*taur*. As per judgment and decree dated 01.08.1970 (Ex.P1 and Ex.P2), Bawa Singh held to be co-owner in possession to the extent of 1/6 share in the aforesaid vacant plot/*taur*. Judgment of the lower appellate Court was upheld by this Court vide judgment dated 26.09.1975 (Ex.D3). Hence, the finding that Bawa Singh was co-owner in possession to the extent of 1/6 share had attained finality. Therefore, the stand taken by the defendant No.1-Bawa Singh in his written statement that he was exclusive owner of the property being fell to his share pursuant to the family settlement, carried no weight. No date, month or year of the alleged family settlement had been given. Moreover, the said family settlement was not reported to any of the authority. Depositions of Sarwan Singh (DW-2), Bawa Singh (DW-3), Jit Singh (DW-5) and Boota Ram (DW-8), purchaser of 5 Marlas of land from Hari Singh vide agreement dated 25.05.2005 (Ex.DW8/1), proved that the property in question was ancestral one, which had devolved upon Vir Singh, Wazir Singh, Waryam Singh, Sunder Singh, Boor Singh and Jawala Singh

defendants after their demise.

Another fact, which both the Courts below have taken into account is that the legal heirs of deceased-Kahna namely Vir Singh, Wazir Singh, Waryam Singh, Sunder Singh, Boor Singh and Jawala Singh had not been impleaded in the suit for partition. Reference was made to the pedigree table, wherein Vir Singh was shown to have been inherited by Thakar Singh and Ishar Singh and Thakar Singh was inherited by Sadhu Singh, Bawa Singh, Charan Singh and Jit Singh. However, said Jit Singh son of Thakar Singh had not been impleaded in the suit. On account of non-joinder of necessary parties, the suit was not maintainable. Since Jit Singh son of Thakar Singh son of Vir Singh had succeeded to the extent of 1/48<sup>th</sup> share, the suit was held to be bad for non-joinder of necessary parties.

One more fact, which the Courts below have taken into consideration is that all the joint properties owned by the parties to the suit were not included in the subject matter of the suit. This fact was admitted by Sharanjit Singh, attorney of plaintiff (PW-2) that in addition to the suit property, parties also owned joint land. Parties were owners of houses within the *Lal Lakir* of village. This witness further stated that those houses stood partition. But, this fact was not so stated in the plaint/suit. Accordingly, the suit was held to be bad for partial partition. The lower appellate Court reversed the finding of trial Court on issue No.1 and the plaintiff-appellant was held to be owner/co-sharer in the suit property to the extent of 1/18 share. Ultimately, the suit of the plaintiff-appellant was dismissed.

After going through the impugned judgments, this Court is of the view that the finding of the lower appellate Court holding the plaintiff-

appellant as co-sharer in the suit property to the extent of 1/18 share does

not require any interference. However, sufficient evidence has been led by the defendants-respondents to prove that suit of the plaintiff-appellant was bad for non-joinder of necessary parties as well as partial partition. Accordingly, suit of the plaintiff-appellant has been rightly dismissed by both the Courts below after appreciating evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

03.08.2015  
ajp

(RITU BAHRI)  
JUDGE