

117

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1565 of 2015 (O&M)
Date of Decision: 22.12.2015

Jagdish RamAppellant
Vs
Jagat Ram and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep K. Sharma, 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]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below in a suit for declaration.

[2]. Plaintiff filed suit for declaration with consequential relief of permanent injunction to the effect that plaintiff has purchased 1/6th share of the suit land from Moti and Gangu. Defendants have also purchased 5/6th share from them out of total land measuring 3 *Kanals* 14 *Marlas*.

[3]. Plaintiff alleged that at the time of purchase he was put into possession over *Khasra* No.623(0-13) which falls near his house, whereas other two *Khasra* Nos. 98 and 659 falls near the house of the defendants.

[4]. The application for partition was filed by the plaintiff in which mode of partition was framed and the partition was proposed to be done in accordance with possession. However, the Revenue officials wrongly and illegally made *Nakshas* against the mode of partition and *Khasra* No.623 was wrongly allotted to the defendants. Partition was wrongly done by the Assistant Collector, 1st Grade, Nangal without following proper procedure and by ignoring mode of partition and *Nakshas* were wrongly accepted by the Assistant Collector 1st Grade. The order dated 30.05.2008 passed by the Revenue officer was against the mode of partition and was, therefore, without jurisdiction.

[5]. The plaintiff further alleged that since the defendants started threatening to alienate the suit property and also to change the nature of the property by way of raising construction which is in possession of the plaintiff, therefore, the present suit came to be filed.

[6]. Suit was contested by the defendants on all counts. Defendants alleged that the plaintiff had concealed material facts. Earlier suit titled as Jamba Ram and others vs. Teja Ram and others in which plaintiff was defendant No.2 was decided on 22.01.2003. The jurisdiction of the trial Court in deciding the present suit was questioned by the defendants, besides taking

plea of estoppel and maintainability of the suit.

[7]. It has been admitted that the defendants have purchased 5/6th share out of the suit land and the Assistant Collector, 1st Grade, Nangal has lawfully decided the partition case of the parties by following proper procedure. The order dated 30.05.2008 has not been assailed by the plaintiff before the superior Authority in hierarchy. Even the *Sanad Taksim* has also been prepared and the same has not been challenged by the plaintiff.

[8]. After filing replication, following issues were framed by the trial Court:-

- “1. *Whether the order dated 30.05.2008 passed by the Asstt. Collector, 1st Grade, Nangal is illegal, null and void? OPP*
2. *Whether the plaintiff is entitled to get the relief of declaration as prayed for? OPP*
3. *Whether the plaintiff is entitled to get relief of permanent injunction as prayed for? OPP*
4. *Whether the plaintiff has suppressed material facts from the Court, if so, its effect? OPD*
5. *Whether Civil Court has got jurisdiction to try and decide this Suit? OPP*
6. *Whether this suit is not maintainable? OPD*
7. *Relief.”*

[9]. Both the parties led their respective evidence to prove

their case on the aforesaid issues.

[10]. Trial Court dealt with issues No.1, 2, 5 and 6 jointly and decided these issues against the plaintiff and in favour of the defendants. Based on said findings issue No.3 was also decided against the plaintiff and in favour of the defendants. Issue No.4 was not pressed by the defendants and ultimately suit was dismissed with costs vide judgment and decree dated 20.05.2013.

[11]. Appellant/plaintiff remained unsuccessful in appeal before the lower Appellate Court which was dismissed by the lower Appellate Court vide judgment and decree dated 02.09.2014.

[12]. I have considered the arguments raised by the learned counsel for the appellant.

[13]. Admittedly Jamba Ram and others had filed civil suit against Teja Ram and Jagdish Ram. The said suit was decided on 22.01.2003 vide Ex.D-2. It was held therein that the plaintiff and defendants are co-sharers in the property in question to the extent of area purchased by them. Application for partition was moved by the plaintiff Jagdish Ram before the Revenue Officer. The order dated 30.05.2008 was passed by the Revenue Officer i.e. Assistant Collector and even thereafter *Sanad Taksim* was also issued. Plaintiff could have challenged that order and

issuance of *Sanad Taksim* before the competent Court.

[14]. Civil Court has got no jurisdiction to entertain the plea of partition or appellate relief therein, in view of Section 158 of the Land Revenue Act. The remedy was available to the plaintiff before the Authority in hierarchy.

[15]. The reference can be made to an order dated 02.12.1994 passed in **Civil Revision No.1629 of 1993** titled as **Raj Kumar vs. Katu Ram @ Chhotu Ram and others** in which it was held that the suit challenging the partition proceedings is not maintainable before the civil Court in view of bar of jurisdiction in terms of Section 158(1) and 158(2) CPC.

[16]. Apparently, the order assailed in the civil suit is appealable in nature, therefore, the suit in the present form has been rightly held to be not maintainable.

[17]. The plaintiff has assailed the order dated 30.05.2008 passed by the Assistant Collector, 1st Grade-cum-Tehsildar, Nangal to be null and void and also sought relief of permanent injunction against the defendants Jagat Ram and Jamba Singh. The plaintiff being co-sharer to the extent of 1/6th share from the common vendor Moti and Gangu, possibly cannot maintain suit for permanent injunction against co-sharer. The revenue record does not show plaintiff to be in exclusive possession in the capacity of co-sharer.

[18]. It is a settled principle of law that no injunction can be granted on behalf of a co-sharer against a co-sharer especially when plaintiff is not proved to be in exclusive possession of the defined portion of the joint land. The earlier suit filed for permanent injunction by Jamba Ram and Jagat Ram against Teja Ram and Jagdish Ram was decreed vide judgment and decree dated 22.01.2003 Ex.D-2 and D-3 holding them to be co-sharer to the extent of area purchased by them.

[19]. The plea in respect of partial partition raised by the plaintiff/appellant has to be appreciated in the light of order dated 27.02.2006 passed by the Revenue Officer Ex.D-8. The appellant has not assailed the aforesaid order Ex.D-8 before any Authority.

[20]. The Revenue Authority has passed the order dated 30.05.2008. Plaintiff has already filed the objection against the said order and the defendants have filed reply thereto. The Revenue Authority proceeded in the matter as per procedure prescribed under the Land Revenue Act. The jurisdiction of civil Court on the subject matter is specifically barred.

[21]. The plaintiff could have availed lawful remedy available under the special Act and declaration *qua* the order dated 30.05.2008. In considered opinion of this Court availed remedy cannot be granted by the civil Court.

[22]. Having considered the arguments raised at the Bar, I am of the considered view that no law point worth consideration is involved in the present appeal. The findings recorded by the Courts below cannot be held to be perverse or to be the result of misreading of evidence in any manner.

[23]. The appellant could not show from the record as to how order dated 30.05.2008 is nullity or the result of partial partition in view of order dated 27.02.2006 Ex.D-8 having not been assailed by the appellant in any manner. Order dated 30.05.2008 was appealable in nature and cannot be held to be nullity on account of any alleged illegality raised by the plaintiff/appellant.

[24]. Since the proceedings before the Revenue Authorities were in progress, in view of bar created in terms of Section 158 CPC, jurisdiction of civil Court in terms of Section 9 CPC could not be invoked by the plaintiff/appellant. Therefore, questions as formulated in para no.7 of the ground of appeal by the appellant are not attracted to the facts of the given case.

[25]. In the light of the observations made above, I am of the view that there is no substance in the present appeal and the same is accordingly dismissed.

December 22, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE