

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

RSA No.3276 of 2015 (O&M).
Date of Decision: 28.09.2015.

Kulbir Singh

....Appellant.

VERSUS

Hardish Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate for the appellant.

SNEH PRASHAR, J.

CM-7897-C-2015

In view of the grounds mentioned in the application, delay of
29 days in refiling the appeal is condoned.

C.M. stands disposed of.

RSA-3276-2015 (O&M)

1. This was second appeal filed by appellant-plaintiff Kulbir Singh (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 21.09.2011 passed in Civil Suit No.85 of 2004 by learned Additional Civil Judge (Senior Division), Dasuya, dismissing the suit for

declaration with consequential relief of permanent injunction filed by appellant against defendants-respondents Hardish Kaur and others (hereinafter referred to as the “respondents”) which was upheld by the first appellate Court vide judgment dated 06.02.2015.

2. Precisely, the facts which need elaboration are that by way of the instant suit the appellant sought declaration that he alongwith his brothers namely, Amrik Singh, Rajinder Singh and Narinder Singh are owners-in-possession of land measuring 36 Kanals 0 Marla out of total land measuring 178 Kanals 5 Marlas (detail of which was given in the head note of the plaint) on the basis of a family partition/settlement dated 02.08.1989, situated in the revenue area of village Mallian, Hadbast No.35, Tehsil Dasuya, District Hoshiarpur. As a consequential relief, a prayer was made for an injunctive order restraining the respondents from interfering in their peaceful cultivating/exclusive possession of Khasra No.7R/5(8-0),6(8-0),15M9(2-0), and 8R/1(8-0), 10(8-0), 11M(2-0) total land measuring 36 Kanals 0 Marla.

The appellant pleaded that he and his brothers purchased land measuring 24 Kanals 2 Marlas from Narinder Kaur (respondent-defendant No.13) vide two separate sale deeds dated 19.07.1989. The subject matter of each sale deed was land measuring 12 Kanals 1 Marla. Originally the suit land was in possession of Late Shri Ujjagar Singh and after his death his property was inherited by his widow and daughters including daughter Narinder Kaur. Widow Jit Kaur also died and her share was inherited by her legal heirs. A family partition took place on 02.08.1989 between the parties

which was reduced into writing and by virtue of which specific Khatas were allotted to each share holder by way of mutual consent. Some portions of the land were fertile and some were less fertile and accordingly some co-sharers were given less land and some were given more as per quality of the land. He (appellant) and his brothers were given 36 Kanals of land instead of their actual share of 24 Kanals. They were put in possession of specific khasra number as aforesaid. The Jamabandi and the Khasra Girdawaris had also been entered in their names vide order dated 08.04.1991. Now the respondents intended to interfere in their possession although they had no right to do so.

3. Respondents No.1,3 and 5 appeared and contested the suit raising objections with regard to maintainability of suit, cause of action and concealment of true and material facts by the appellant. Replying on merits, they denied that any family partition had taken place between the parties. The order passed by Naib Tehsildar was alleged to be wrong. Similar stand was taken by respondents No.14 and 15 whereas respondents No.2,4 and 12 admitted the family partition.

4. On the rival contentions of the parties, following issues were framed:-

(1) Whether the partition/settlement dated 2-8-1989 took place between the parties in which specific portion allotted to each share holders as alleged? OPP.

(2) Whether plaintiff and his brothers came into exclusive possession of land measuring 36 Kanals as detailed in the head note of the plaint, if so, its effect? OPP.

(3) Whether the defendants threatened to interfere into the possession of the plaintiff forcibly and illegally? OPP.

(4) Whether the suit of the plaintiff is not maintainable in the present form? OPD.

(5) Whether the plaintiff has got no locus standi to file the present suit? OPD.

(6) Whether the plaintiff is entitled to declaration and injunction as prayed for? OPP.

(7) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, learned trial Court came to the conclusion that no credibility can be attached to the alleged family partition document and the appellant had failed to prove that he and his brothers had been given possession of 36 Kanals of land. Resultantly, the suit of the appellant was dismissed.

7. Appellant preferred an appeal against the judgment and decree dated 21.09.2011 passed by learned trial Court, which was dismissed by Additional District Judge (Adhoc) Fast Track Court, Hoshiarpur vide judgment dated 06.02.2015.

8. Feeling aggrieved, the appellant filed the instant Regular Second Appeal.

9. The submissions made by Mr. V.K. Jindal, learned senior counsel representing the appellant have been considered and the record has been perused.

10. It was argued on behalf of the appellant that he was non suited

by the trial Court and the first appellate Court on the ground that the private partition document dated 02.08.1989 was not an authentic document as it was unregistered. The fact that the document of partition had been duly implemented and accepted by both the parties vide order dated 08.04.1991 Ex.P9 passed by revenue officer was not taken into consideration. The documents Ex.P10 and P11 i.e. Naksha Hakdarwar and the Rapat Roznamcha Ex.PW3/A showing entry of private partition were also ignored. To support his argument that the memorandum of family partition does not necessarily require registration for being admissible in evidence and is a substantive document for proving possession especially when it had been authenticated by the revenue officer, learned counsel relied upon **Tarlok Chand vs. Vijay Kumar, 1993(1) R.R.R. 115; Nitin Mohan Nagpal vs. Niren Mohan Nagpal, 2012(5) R.C.R. (Civil) 1; and Balwant Singh vs. Smt. Shunno Devi and others 2011(1) P.L.R. 396.**

11. By way of the present suit, the declaration sought by the appellant is that he and his brothers are owners-in-possession of land measuring 36 Kanals 0 Marla out of the total land measuring 178 Kanals 5 Marlas. They also claimed to be in exclusive cultivating possession of Khasra numbers detail of which is given in para no.2 above. Admittedly, the appellant alongwith his brothers purchased land measuring 24 Kanals from Narinder Kaur (respondent No.13), one of the co-sharers vide two sale deeds dated 19.07.1989. No other document conferring ownership rights of 36 Kanals 0 Marla on the appellant and his brothers could be produced or proved by him. He pleaded about a family partition dated 02.08.1989

according to which he alleged that he and his brothers were in possession of 36 Kanals 0 Marla land. Execution of any such family partition was denied by the respondents who contested the suit. Otherwise also, the document dated 02.08.1989 which was an unregistered document was incompetent of conferring ownership rights on the appellant and his brothers qua 36 Kanals land. Needless to say that a document creating title in the property of the value of more than Rs.100/- requires compulsory registration as per provision of Section 17 of the Indian Registration Act.

The plea of the appellant that since some portion of the total land was more fertile than other portions, some persons were given less land and some were given more, could not be proved by him as is mentioned in para no.8 of the judgment of the learned appellate Court. Otherwise also, on that basis also he and his brothers could not claim to have become owners of land measuring 36 Kanals 0 Marla when they had purchased only 24 Kanals 2 Marlas land out of the total land.

12. As observed above, there is no authentic document i.e. gift deed or relinquishment deed vide which other co-sharers relinquished their ownership rights in favour of the appellant and his brothers of the land exceeding 24 Kanals 2 Marlas purchased by them. Mere correction of Khasra Girdawari in respect of the land on the basis of cultivation could also not extinguish the title of the respondents in the suit land. The judgments relied upon by the appellant were rendered on their own facts. The case in hand is on a completely different footing. The appellant alongwith his brothers admittedly purchased 24 Kanals 2 Marlas whereas he

is seeking declaration of ownership and possession with regard to land measuring 36 Kanals.

13. The order of Naib Tehsildar dated 18.04.1991 Ex.P9 has no reference of the alleged family partition so it cannot be said that the alleged document dated 02.08.1989 was implemented/accepted by the parties or by the revenue authorities. More so, the proceedings which led to the order could not be produced as during his statement Kamlesh Kumar, Clerk of the Office of Deputy Commissioner, Hoshiarpur stated that the order of rectification of Girdawari passed by Naib Tehsildar, Bhumma relating to the case titled 'Narender Singh vs. Jit Kaur' had got burnt in a fire in the record room of Hoshiarpur. Thus, learned trial Court as well as learned first appellate Court rightly held that the alleged family partition document was not an authentic document and no credence could be attached to it. It was also incapable of conferring any title or right on the appellant and his brothers much in excess to their share in the land in question. It could not even be looked into for ascertaining possession to the exclusion of other co-owners.

Thus, the appeal being completely devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

28.09.2015
jitender