

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

**RSA No.4814 of 2014 (O&M)**

Date of decision: 4<sup>th</sup> February, 2015

Tejpal and others

... Appellants

Versus

Shaktipal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Manoj K. Tanwar, Advocate  
for the appellants.

**FATEH DEEP SINGH, J.**

It is consequent upon passing of contrary judgments through judgment and decree dated 03.04.2008 by the Court of learned Civil Judge (Junior Division), Mohindergarh dismissing the suit of the plaintiffs and which findings were reversed by learned Additional District Judge, Narnaul through judgment and decree dated 19.07.2014 decreeing the suit of the plaintiffs, the present appellants who were among the defendants have come up in this regular second appeal.

Heard Mr. Manoj K. Tanwar, Advocate representing the appellants.

The plaintiffs Ravinder and another had sought suit for declaration to the effect that they have purchased land and thus are its owners detailed in the head-note of the plaint situated in village Khudana, Tehsil and District Mohindergarh on the basis of sale deed No.1324 dated 12.12.1988 leading to sanction of mutation No.5481.

The claim in brief is that initially Mahabir son of Hathu defendant No.1 was the owner of 53/252 share in the land part of which is in present dispute i.e. equal to 39 Kanals 6 Marlas out of the total land measuring 186 Kanals 19 Marlas situated in village Khudana. It is through the following transactions, Mahabir sold his share in this joint land as follows:

1. Through sale deed dated 21.08.1988, he sold 12 Kanals 13 Marlas of land to Puran and others regarding which mutation No.5327 was sanctioned;
2. Through sale deed dated 18.05.1991, he sold land measuring 22 Kanals 8 Marlas to Tejpal and others regarding which mutation No.5432 was incorporated;
3. Through sale deed dated 12.12.1988, Mahabir sold land measuring 24 Kanals to Ladhu Singh husband of defendant No.29 and father of defendants No.24 to 28.

Thus from this, it clearly ensues that Mahabir sold the land more than his share in the joint property. It is during the events of representation, AC Grade II through orders dated 05.10.1997 cancelled mutation No.5481 pertaining to sale deed No.2324 dated 12.12.1988. The plaintiffs who claim to be the owners of land to the extent of 480/3739 share of this joint land measuring approximately 24 Kanals have thus filed the suit in question seeking declaration to be the owners of their share of the land in question.

It is much apparent in abundance from the records that defendant No.25 Sanju is minor son of deceased Ladhu Singh above said and has been sued through his brother Mahesh defendant No.24 rather than through his widowed mother.

Learned trial Court quite in oblivion has proceeded ex parte against these defendants including the minor contrary to the provisions enshrined by way of Order XXXII Rules 3 & 4 CPC without expressing reasons for not appointing a Court guardian and thus, is apparently a gross and culpable negligence and though at this juncture it cannot be ascertained if any prejudice has been caused to the rights of the minor but certainly he was not adequately and legitimately represented before the trial Court during the course of this adjudication, certainly is a matter of serious consequence.

From this all, it ensues and the revenue documents Ex.PA to Ex.PG, it leaves no scope to doubt that the entire land over which rival claims are being laid is a joint un-partitioned agricultural land and

innumerable persons are its owners laying claim to their respective shares and thus, for judicious decision Civil Court cannot ascertain the precise share of any of the parties even to this litigation, especially in view of the fact that during the course of time there has been repeated alienation, unless and until this agricultural land is partitioned which is within the sole jurisdiction of the Revenue Authorities in terms of Section 158 of the Punjab Land Revenue Act, 1887 (in short, 'the Act') as applicable to the State of Haryana. It would not be appropriate neither it is practically possible for the Civil Court to adjudicate on this dispute qua respective shares of the parties. It is well settled law reference of which can be taken note of the ratios laid down in '**Sucha Singh and others v. Balbir Singh**' 1964 PLJ 160, which has been subsequently relied upon in '**Jagga Singh v. Surjeet Singh and others**' 2000(3) RCR (Civil) 52 that being a pure agricultural land Civil Court cannot effect partition and the parties need to be relegated to the position of moving appropriate authorities for partition which has even been invariably mentioned in the first appellate Court judgment in the concluding paragraphs. In the light of the evidence on record and the total ambiguous and unclear situation emerging from the revenue records, it would have been appropriate for the courts below to have directed the parties to first get the land partitioned under the Punjab Land Revenue Act, 1887 and then could have ascertained their title to a particular definite share of this property and since this fact is coming in the way of the courts to bring about a judicious decision and the

question of partition/demarcation Civil Court has no jurisdiction to entertain, try and determine by way of ordinary original civil jurisdiction. In view of the situation so created and the inherent lack of jurisdiction of the Civil Court it would be highly unjust and inappropriate to determine the relief being sought by the plaintiffs in the suit.

The very observations of the trial Court in its judgment that the plaintiffs can ask defendant No.1 Mahabir to compensate the plaintiffs because Mahabir sold the property to Puran, Tejpal and others beyond his share in the joint property are in itself sufficient to show and reflect the inability of the Civil Court to have adjudicated on it until and unless there are determinable shares. Thus a dispute in this peculiar and innocuous situation would not serve legal legitimacy. Thus, by adjudicating this dispute not only miscarriage of justice has resulted but has also struck at the very roots of the principle of dispensation of justice. It would have been in the best interest of justice if the courts below would have sent the matter before the Revenue Authorities to call upon the parties to first get this un-partitioned joint agricultural land partitioned and instead have usurped the jurisdiction of the Revenue Authorities by adjudicating on such intricate revenue claims and counter claims. There being an inherent defect of jurisdiction and it is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be

enforced or laid down, even at the stage of execution and even in collateral proceedings. Reliance in this regard can be placed upon **‘Kiran Singh v. Chaman Paswan’ (1955) 1 SCR 117.**

In the light of these circumstances, it is in the best interest of the parties, the judgment and decree under challenge is set aside and the parties shall get the matter adjudicated qua their respective shares from the appropriate forum. Nothing herein remarked shall be construed onto the merits of the decision. The matter as such is remanded to the Trial Court/Successor Court to return the plaint to the plaintiffs to first get the land partitioned and thereafter to approach the Civil Court if the eventuality so arises.

The appeal thus stands disposed off in limine.

**(FATEH DEEP SINGH)**  
**JUDGE**

**February 4, 2015**  
*rps*