

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5397 of 2014 (O&M)

Date of Decision: 20.07.2015

Harbans Singh

... Appellant

Versus

Bhim Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Mehsempuri, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The plaintiff has failed in both the courts below when unable to prove that the suit property was ancestral in nature and that his father had no right to sell his share of the agricultural land in dispute coming from his father to two of his sons to the exclusion of third son, who is the appellant. It is always open to a co-sharer to sell his share in land to anyone he likes but in case he sells by specific khasra numbers, those khasra numbers will be ignored; but sale will not be faulted, till such time as partition takes place among the co-owners and the property stands divided by metes and bounds or by any other acceptable mode of partition in which those khasra numbers may have role to play when possession has become settled. It is not disputed that partition proceedings are underway.

In pressing the appeal, the learned counsel for the appellant has relied on an order of the Divisional Commissioner, Patiala Division, Patiala

in case RR-41/2013 instituted on June 06, 2013 between *Anoop Singh etc. and Kirpal Singh etc.* in which Harbans Singh son of Ram Singh, the appellant, is arrayed as respondent # 7. The Commissioner by his order dated March 31, 2015 has dismissed the revision and a direction has been issued to the Assistant Collector, 1st Grade, Samana to complete the partition proceedings expeditiously as the same is a “badly delayed case”.

It is noticed that the revision was filed against the order of the Assistant Collector, 1st Grade approving the Naksha "Arra" vide order dated August 27, 2012 and the appeal against which was rejected on March 28, 2013. What was argued before the Commissioner was that the land in dispute was partitioned orally between the parties about 45/50 years back and the petitioners entered separate possession of the land of their shares but no separate possession had been provided to the *tak* of the petitioners in the Naksha 'Arra' and the same has been wrongly approved without giving any opportunity of hearing to the petitioners. The learned Commissioner has noticed that the Naksha 'Arra' has been passed in the presence of the parties and their counsel appearing, who were heard and gave their consent in approving the Naksha 'Arra'. If there was consent, the Commissioner was right that the appeal must fail.

Therefore, I have no reason to disturb the findings of fact recorded by both the courts below with respect to the right in the father Ram Singh to sell his property to two of his three sons, which property had acquired the character of self-acquired property in the hands of the father by virtue of the findings in the judgments of the courts below to have excluded his son Harbans Singh as per his father's choice. The findings as to property

not being ancestral in nature have been recorded after appreciating the evidence on the file. I have no reason to differ.

There is one more aspect which requires to be looked into as it has been pressed by Mr.Mehsempuri and that is that the appellant has filed an application under Order 41 Rule 27 CPC in the present appeal for leading additional evidence of certain Jamabandies which are appended as Annexures A-1 to A-3.

It transpired that the appellant's grandfather's brother died issueless and when succession opened on his demise his estate would devolve on Class-II heirs/reversioners by inheritance since his wife had pre-deceased him. It is share coming from this source that is claimed.

Since these documents were not produced by the plaintiff before the courts below, I see no cogent reason to entertain the same and examine them to see whether they have any remote, immediate or direct impact on the result of the decree in appeal. However, since the partition proceedings have not come to an end it will be open to the appellant to make whatever use he can of these three Jamabandies before the revenue authorities with respect to determination of shares devolving from the appellant's grandfather's brother.

With this liberty, the appeal stands dismissed as it does not involve a question of law and much less a substantial question of law.

(RAJIV NARAIN RAINA)
JUDGE

20.07.2015
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