

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 241 of 2016 (O&M)

Date of decision: 18.03.2016

Shamsher Singh and others

... Petitioners

versus

Vikram Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anand Kumar Bishnoi, Advocate for the petitioners.

K.Kannan, J. (ORAL)

In a suit for partition with reference to one item of property, the defendants have taken a plea that there are several other items of property which are enjoyed jointly and held in joint *khewat*. It is also the contention that the plaintiff has actually sold the far in excess of his entitlement and is deliberately filing a suit only with reference to the property which is held by the defendant over which he has constructed the house.

The court while disposing for the application has made reference to the averment in the written statement and the documents which show the properties held in joint *khewats* and directed the plaintiff to include them in the plaint.

The plaintiff is aggrieved that the defendants have been allowed to secure a direction against the plaintiff to amend his plaint. According to him, the Court could have only framed an additional issue of whether the suit was liable for being dismissed for partial partition or whether the properties were also treated to be as partible properties.

This view was taken by the Hon'ble Supreme Court in Bhagwan Swarrop and others Vs. Moolchand and others, 1983 AIR (SC) 355

In a suit for partition the position of plaintiff and defendants can be interchangeable. It is that each adopts the same position with other parties _____.

In a suit for partition any of the party can claim transposition from the category of the defendant to the category of the plaintiff and vice versa. While it is normally correct that the defendants cannot amend the plaint, the plea by the defendant that all properties have not been brought in the suit may only require the properties set down by the defendant as also the properties in suit which could be set out in a separate schedule or be referred to by the Court as the property that belongs to the family. The Court will treat the property cited by the defendant as also the suit properties and if it found they are all the properties belonging jointly to the plaintiffs and the defendants, the Court will, while considering the case of the plaintiff, provide for a suitable relief after taking note of the alienation made by the plaintiff or his predecessors as made that would go into the reckoning for working out his share in the property. The direction for including the items in suit need not be done through an amendment in the plaint but instead I modify the order to state that they shall all be taken as the suit properties and specifically referred to as available for consideration at the time of disposal of the case.

I dispense with the notice to the respondents. The order already passed by the Court is modified that instead of bringing an amendment to the plaint, the property stated to belong to the family and which is capable of being partitioned will be treated as suit properties available for consideration of the defence taken by the defendant.

The revision petition is disposed of with the above observations.

(K.KANNAN)
JUDGE

18.03.2016
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