

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 20th, 2016

1. R.S.A.No.3802 of 1998 (O&M)

Ram Singh & others

...Appellants

Versus

Bachhittar Singh & others

...Respondents

2. R.S.A.No.1082 of 2009 (O&M)

Ram Singh & others

...Appellants

Versus

Avjinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Amit Singh Sethi, Advocate,
for the appellants in both the appeals.

Mr.Anil Kshetarpal, Senior Advocate with
Mr.Rohit Nagpal, Advocate,
for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of aforementioned two regular second appeals bearing No.3802 of 1998 and 1082 of 2009 as the common questions of law and fact are involved in these both the appeals.

RSA No.3802 of 1998 is arising out of decretal of the civil suit No.161 of 1989 titled as “Bachhittar Singh and others Vs. Ram Singh and others” (hereinafter referred to “Suit No.1”), whereby following relief sought by the respondents-plaintiffs has been allowed:-

“Suit for declaration to the effect that the plaintiffs and the

defendants are the joint owners as per their respective shares of the land comprised in Khewat No.210, Khatauni No.268, Khasra No.133-134-138-141-1253-1254-1251-1252-1249-1250-1246-1247-1248-1264-1255-1256-1257-1260-1261-1262-1263-1258-1259-1265, as per jamabandi for the years 1982-83, situated at Village Threeke-156, Tehsil and District Ludhiana;

and

for declaration that the mutation-order no.2791 dated 21.12.1984 entered and sanctioned on the basis of an alleged agreement for partition dated 17.11.1984 executed in between the defendants no.1 to 4, is null, void, inoperative, and it has got no effect on the legal rights of the plaintiffs

and

for a decree of permanent injunction restraining the defendants from in any manner alienating any specific portion of the land in suit by way of sale, mortgage, gift, etc. or from raising any sort of construction or from changing the nature and character of the land in suit, on the basis of oral and documentary evidence.”

Other suit No.313 of 1989 in RSA No.1082 of 2009 (for short “Suit No.2) has been filed at the instance of Ram Singh and others against Avjinder Singh and others, whereby defendant in first suit and plaintiff in the second suit had sought following declaration:-

“Suit for a decree of declaration to the effect that the plaintiff no.1 is the owner in possession of the land measuring 2B, 8B, 0B pukhta comprised in khewat No.249, Khatauni No.298, Khasra No.133 and Khewat No.249, Khatauni No.302, Khasra No.141 is a separate number as per jamabandi for the year 1982-83 situated at Village Three-ke, Teh. & Distt. Ludhiana, Hadbast No.156, on the basis of registered Will dated 15.6.1979 in favour of the plaintiff No.1, Ram Singh.

AND

for a decree of permanent injunction, restraining the defendants from interfering in the peaceful possession of the plaintiff or from alienating in any manner any specific portion of the land in suit by way of mortgage, gift, sale etc. and further restraining them from cutting down the trees in the orchard or boundary of the suit property mentioned herein before on the basis of oral and documentary evidence.”

From the perusal of the relief sought in the second suit, the successors-in-interest of Harnam Singh claimed the declaration that they are owners in possession of the specific khasra numbers.

Mr. Amit Singh Sethi, learned counsel appearing on behalf of appellants in both the appeals submitted that respondent-plaintiff instituted suit No.1 claiming the aforementioned relief on the premise that they had purchased the share of Nirmal Singh, Mukhtiar Singh sons of Harnam Singh as per the partition agreement dated 17.11.1984 and, therefore, had become co-sharers, whereas stand of the appellants-plaintiffs before the Courts below was that suit was not maintainable. The jointness and co-sharership of the plaintiff was seriously disputed as the plaintiff was merely a stranger.

He further submitted that the suit of the respondent-plaintiffs was not maintainable as the Courts below have misread and misconstrued the partition agreement dated 17.11.1984, which merely recognised and acknowledged the accomplished facts. In fact, the parties had already taken the possession of the respective shares on the basis of the partition agreement dated 17.11.1984. There was already a partition in pursuance of the judgment and decree dated 2.6.1972 (Ex.D5). The aforementioned factum has been reflected in the jamabandi for the year 1972-73.

He also submitted that on the basis of the judgment and decree, specific khasra numbers were given to all the brothers according to their share of property owned by Harnam Singh, who was survived by four sons, namely, Ram Singh, Mukhtiar Singh, Nirmal Singh and Kamikkar Singh. Kamikkar Singh died issueless in the year 1972. The defendants have claimed declaration qua ownership without having the copy of the sale deed. Relief for possession cannot be asked/sought, therefore, finding on this count is set-aside. Though there was arrangement amongst the co-sharers, but the same was not reflected in the jamabandi, in essence there is no affirmation of the same from the revenue record. The private partition had actually been shown. In support of his contention, relied upon the ratio decidendi culled out in **Ajmer Singh Versus Dharam Singh, 2006 (2) R.C.R. (Civil) 541 and Mohan Singh Versus Lachhman Singh, 1993 (1) R.R.R. 24.** He further relied upon the ratio decidendi culled out by the Privy Council in **Beni Parshad Versus Mt.Gur Devi, AIR 1923 Lahore 497 (1)** to contend that partial partition is permissible. In fact, khasra No.141 had not fallen to the share of Ram Singh. It is later on, only 1 bigha of land had fallen to his share, whereas the respondents had purchased a fraction of land of khasra No.141.

He further submitted that the father of Harnam Singh died in the year 1980 and the parties, though had already effected the partition, but recognised the oral partition in writing vide writing dated 17.11.1984 (Ex.P4), which has not been taken into consideration by the Courts below, thus, there is incorrect appreciation of the documents, which itself is a gross perversity. In support of his contention, relied upon Para 452 of the Punjab Land Administration Manual recognising the complete and incomplete

partitions. The findings of the Courts below, thus, are not sustainable in the eyes of law and, therefore, liable to be set-aside.

He further submitted that unfortunately the brothers of the appellants, namely, Mukhtiar Singh and Nirmal Singh did not see eye-to-eye and were always there to create trouble for them. They sold a small piece of land in sale mentioning some construction thereon. The suit, in fact, was brought at the instance of the brothers for extraneous considerations. The appellants had been dealing with their own share of land which is in their possession for the last thirty years. Even an application bearing No.3229-C of 2002 under Order 41 Rule 27 CPC was filed in RSA No.3802 of 1998 for placing on record the affidavits of the appellants' brothers and mother as the mother had since expired leaving behind Mukhtiar Singh, Nirmal Singh and Ram Singh as legal representatives being her sons. She gave the accompanying affidavit during her life time. He has also drawn the attention of this Court to the Misc.Application bearing No.16670-C of 2016 moved again under the provisions of Order 41 Rule 27 CPC for bringing on record the additional evidence of the following documents:-

- a) Copy of plaint dated 4.2.1972 (Annexure A-1);
- b) Jamabandi for the year 1949-50 (Annexure A-2); and
- c) Certified copy of mutation No.2047 (Annexure A-3).

Thus, there is gross illegality and perversity and prays for allowing of appeals.

Per contra, Mr.Anil Kshetarpal, learned Senior Counsel assisted by Mr.Rohit Nagpal, Advocate, representing the respondents submitted that the judgments and decrees are perfectly sustainable in the eyes of law. The defendants admitted the ownership of the plaintiffs qua khasra No.141 and, therefore, there was no need to bring on record the sale

deed. The written statement is conspicuously absent with regard to partition effected in the year 1972. In fact, the plaintiffs also admitted to be the co-sharers/ joint owners of khasra numbers. Khewat remained joint. He has also drawn the attention of this Court to Ex.D5, decree dated 2.6.1972, which reads thus:-

“Value for the purpose of jurisdiction 940/-

Value for the purpose of court fee fixed

Court fees paid on the plaint Rs.19/50P

Decree in suits for possession etc.

(Order XX, Rules 9 and 10 of the Code of Civil Procedure prescribed by the High Court)

In the Court of Sh.J.C.Aggarwal, PCS SJIC Ludhiana.

Suit No.56 of 1972

Mukhtiar Singh (2) Nirmal Singh (3) Kamikar Singh (4) Ram Singh ss/o Harnam Singh s/o Nand Singh residents of Village Threke Teh. & Distt. Ludhiana (5) Smt.Basant Kaur w/o Harnam Singh s/o Nand Singh r/o V.Threke Teh.& Distt. Ludhiana.

Plaintiffs

Versus

Sh.Harnam Singh s/o Nand Singh r/o V.Threke Teh. & Distt. Ludhiana.

Defendants

Suit for declaration to the effect that the plaintiffs are the owners in possession of land measuring 35 Bighas 2 Biswar 4 Biswasis described in Khewat No.95 Khatauni No.128 mentioned in Khatauni Paimaish 1949-50 and para 1 of the plaint to the extent of 1/6th share each, on the basis of oral and documentary evidence.

Plaint presented on the 10.2.72

This suit coming on this day for final disposal before me (Sh.J.C.Aggarwal PCS JMJC Ludhiana) in the presence of Sh.S.S.Sohi Advocate for the plaintiffs and defendant in person

for the defendants. It is ordered that in view of the statement of the dedfendant & counsel for the plaintiffs the suit of the plaintiffs is decreed for declarationas prayed for against the defendant leaving the parties to bear their own costs.

Costs of suit

	<u>Plaintiff</u>	<u>Defendant</u>
	Rs. P	Rs. P
1. Stamp for plaint	-----	Stamp for power
2. -----for power	---	-----petitioner
3. -----exhibits	---	Pleader's fee of Rs.
4. Pleader's fee on Rs.	---	Subsistance for witnesses
5. Subsistance for witnesses	---	Service of process
6. Commissioner's fee	--	Commissioner's fee
7. Service of process	--	
Total	Nil	Nil

Given under my hand and the seal of the Court, this 2nd day of June 1972.

(Seal)

Sd/-SJIC”

On perusal of the aforementioned decree, Mr.Kshetarpal buttressed his argument to contend that the decree is only to the extent that the plaintiffs therein are co-owners in possession of land measuring 35 bighas 2 biswas 4 biswasi described in Khewat No.95, Khatauni No.128 mentioned in Khatauni Paimaish 1949-50 to the extent of 1/6th share on the basis of the oral and documentary evidence. The decree only accommodates adjudication of 1/6th share as jointness continues. He has also drawn the attention of this Court to the jamabandi for the year 1982-83 (Ex.P2), which shows jointness of Khewat No.210. In fact, in column No.4, all the siblings have been shown to be co-sharers and joint owners and the alleged partition dated 17.11.1984 was meaningless. Even the agreement does not reflect any

oral partition and it was in presert and, therefore, required registration. In support of his contention, he has relied upon the ratio decidendi culled out by the Full Bench in **Ram Chander Versus Bhim Singh & others, 2008 (3) RCR (Civil) 685.**

He further submitted that in the other suit, decree Ex.D9 of 31.7.1976 has been brought on record, wherein they have claimed everyone to be co-owner. All the brothers had share, therefore, argument of Mr.Sethi was beyond pleadings and, therefore, liable to be set-aside.

In rebuttal, Mr.Sethi submitted that since the issue pertained to only declaration, therefore, the written statement was only confined to the partition effected on 17.11.1984. There was no occasion for the defendant-appellant No.1, who had filed the written statement along with defendants No.1, 5, 6 and 7 to aver regarding 1964 partition, which is reflected in 1972 decree. Both the Courts below have overlooked the aforementioned facts and, therefore, the findings are not sustainable.

With regard to other suit, he submitted that the declaration has been sought with regard to the khasra numbers mentioned therein, but contended that entire case hinges upon the adjudication of the first suit from which RSA No.3802 of 1998 is arising.

I have heard the learned counsel for the parties and gone through the records with their able assistance and of the view that there is no merit and force in the submissions of Mr.Sethi, for, the decree (Ex.D5) does not show any partition. In fact, it was recognising 1/6th share. In preliminary objection No.1 of the written statement filed on behalf of defendant Nos.1, 5, 6 and 7, there is a categoric stand that the plaintiffs are only joint owners and co-sharers in one Khasra No.141 and have no

connection or concern with the answering defendants. For the sake of brevity, preliminary objection No.1 reads thus:-

*“That the present suit is not maintainable because the plaintiffs are not the co-sharers and co-owners and have no right over the suit land. They are merely strangers. The plaintiffs have no right to challenge the mutation No.2791 dated 21.12.1984. The mutation was legally sanctioned on the basis of partition Agreement dated 17.11.1984. **The plaintiffs are only joint owners and co-sharers in one Khasra No.141. They have no connection or concern with the answering defendants nor they have any relation with the defendants.** They are merely strangers. There is no provision in any law that the strangers without any ownership can challenge the inherited property of the fore-fathers of the answering defendants. On this short ground the suit is liable to be dismissed.”*

Similar is the reply in Para 4 on merits. There is no whisper or submission with regard to the previous decree dated 2.6.1972. Even the jamabandi for the year 1972-73 only reflects the share, which khasra numbers do not partition. Khewat remains joint. The judgments relied upon by Mr.Sethi would not support the case in view of the Full Bench judgment in **Ram Chander’s case (supra)**, wherein it has been held that in the absence of the partition of the khewat, if the parties have arrived at a partition and the khewat remains the joint and not recorded in the revenue record, the property would be branded as joint ownership of all the co-sharers. The suit is not for partition but recognising right of ownership of the land mentioned therein. The relevant paragraphs 15 and 16 of the judgment read thus:-

“15. Property held in common, by two or more persons, whatever be its nature or origin, is said to be joint property

and the owners thereof joint owners. Joint property, envisages a community of interest (ownership) and a commonality of possession vested in the entire body of owners called co-sharers/joint owners. This body of owners is joint, both in possession and in ownership of the property and every co-sharer shall be owner in possession of every inch of the joint estate. Inherent in his status as a co-sharer/joint owner and flowing from his status as a joint owner or a co-sharer of the joint property is the right to assert ownership with respect to every part and parcel of the joint property. The status as a co-sharer would be preceded by a tangible act of conferring proprietary status, whether by way of membership of a coparcenary or by devolution of interest, pursuant to inheritance or by assignment of property by sale etc. A co-sharer asserts joint title and possession even, where other co-sharers/joint owners are in separate possession of different parcels of land and as a natural consequence, a co-sharer in possession of a specific area of joint property possesses the property for and on behalf of all other co-sharers/joint owners. Co-sharers may and often do for the purpose of better management of the joint estate hold separate possession of parcels of joint land. This separation of possession, without a corresponding intent, to sever the joint status of the community of joint owners does not confer a right upon a co-sharer in separate possession to assert his separate ownership. A joint owner, therefore, would be owner of a specified share in the entire joint property but

would not be entitled to claim separate ownership of any specified and particular portion of the joint property till such time, as the property remains joint.

16. A joint owner/co-owner, just as an individual owner, has an inherent right to alienate the joint property, limited to the extent and the nature of his share holding. Upon transfer of his share or a part thereof, a co-sharer transfers only such rights as vest in him as a joint owner, namely, his specified share or a part thereof in the community of joint owners with commonality of possession. A vendee from such a joint owner or a co-sharer would, therefore, receive the property so transferred, with all the rights and liabilities that vested in his vendor, namely, a right to assert a community of interest (ownership) and a commonality of possession in the entire joint estate and along with the entire body of joint/co-owners. Our above conclusion draws sustenance from Section 44 of the Transfer of Property Act and a reproduction thereof would place our conclusions in perspective, as under :-

"44. Transfer by one co-owner. - Where one or two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred."

All these factors have been taken care of by the Courts below while decreeing the suit.

Affidavits by way of additional evidence and the present jamabandi and the judgments would not pale into insignificance as the majority of the documents brought on record have been referred by the

Courts below. Civil Misc.No.16670-C of 2016 is only to place on record certain documents, which are already on record, but they have not been proved and marked etc.

The alleged deed of partition, in the absence of joining of the plaintiffs as party as they had purchased the share in the joint ownership as admitted in the written statement, thus, is not valid in law. In the jamabandi for the year 1983-84, same khewat numbers and khatauni numbers have been given, which, as contended, alleged to have been partitioned, thus, the findings arrived at by the Courts below are based upon the preponderance of evidence. There is no dispute to the manual, but once the khewat remains the joint, the question of partial partition does not arise.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, which are based upon appreciation of oral and documentary evidence. No case for interference is made out.

Appeals stand dismissed.

December 20th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No