

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

**RSA No.101 of 2010 (O&M)
Date of decision:16.05.2016**

Surender Kumar and others ... Appellants

Vs.

Ram Swarup and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Pritam Saini, Advocate
for the appellants.

Mr. C.B.Goel, Advocate
for the respondents.

AMIT RAWAL J.

Appellant/defendants No.3, 5 and 6 are aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby, suit at the instance of the respondent-plaintiffs seeking possession by way of partition of the ancestral land being 27/28, share out of 5 kanals 5 marlas comprised in khewat/khatauni no.515/695, khasra nos.109/29/1/5/1, 110//26/1/5/4, 26/1/5/1, 26/1/5/5, situated within the revenue estate of Jagadhari H.B.No.400, Tehsil Jagadhari, District Yamuna Nagar, for the year 1994-95 and for declaration to the effect that the order dated 07.04.1980 of Assistant Collector II Grade and as well as, with regard to the sale deeds dated 14.10.1999 and subsequent three sale deeds, i.e., Ex.D1, Ex.D11

and Ex.D12 with regard to land measuring 10.66 marlas, 4.5 marlas and 11 marlas, total 26 marlas allegedly executed by defendants No.1 and 2 in favour of defendants No.3 to 6 being illegal, null, void and not binding upon the plaintiff with a consequential prayer of permanent injunction restraining the defendants from alienating the suit land, has been decreed.

Mr. Pritam Saini, learned counsel appearing on behalf of the appellants/defendants No.3, 5 and 6 submits that vide Ex.P10, an application for partition of ancestral land vide case no.9 dated 01.11.1978 amongst the co-sharers was moved and *sanad takshim*, i.e., partition proceedings vide order dated 7.4.1980 (Ex.P-10) culminated into finality, and this fact was reflected in the jambandi for the year 1984 till 1995-96. Plaintiff himself sold the land vide sale deed dated 04.12.1981 (Ex.P15) which reflected the factum of partition, i.e., plaintiff himself accepted the partition but choose to file the suit on 23.10.1999. Vide three sale deeds, subsequent vendees had stepped into shoes of erstwhile owner/co-owners. The trial Court on the basis of the oral and documentary evidence dismissed the suit on 15.09.2007 but the Lower Appellate Court has reversed the findings by holding “that mutation does not confer the right and considered the order dated 07.04.1980 as clerical/ ministerial error and therefore held that share of defendants No.1 and 2 is only 1/56 in total share holding of 28/56 of the plaintiffs and Smt. Raj Rani (mother of defendants No.1 and 2) and legality of sale deeds dated

14.10.1999 referred above effected by defendants No.1 and 2 in favour of defendants No.3 to 6 would be subject to ultimate partition proceedings amongst the joint owners of the first segment represented by first marriage of deceased Banarsi Dass.”

He further submits that the Lower Appellate Court had not noticed the fact that order dated 07.04.1980 had attained finality and the same was actually passed on the statements made by Yudhister Kumar, Rameshwar Sharma, Sona Devi and Sharda Devi. The Lower Appellate Court has further ignored the fact that mutation no.1819 (Ex.D6) showed that Smt. Raj Rani was only co-sharer with her brothers and the brothers did not challenge the said mutation. The mutation was entered in the year 1980 on the basis of a decision rendered by the Revenue Court. The order dated 07.04.1980 was not only between the plaintiffs and Raj Rani but there were other legal heirs of Banarsi Dass, as mentioned above. They were also held to be owners in equal share and the plaintiffs and Smt. Raj Rani were held to be owners in equal share, thus, there was no occasion to hold that in the order dated 7.4.1980, share had wrongly been recorded. The Lower Appellate Court has also committed illegality in not taking into consideration the statements recorded before the Assistant Collector 1st Grade while partitioning the suit land. The statement of Sh. Yudhister Kumar son of Sh. Banarsi Dass and Sh. Rameshwar son of Sh. Banarsi Dass, one of the plaintiffs, were recorded and naksha takshim Ex.CX was found to be correct and thereafter, the

order dated 7.4.1980 was passed, thus, there was no occasion for the Lower Appellate Court to hold that the share of Smt. Raj Rani was 1/56th and not equal share along with her brothers. The Lower Appellate Court failed to appreciate that the appellants herein and defendants therein being subsequent vendees had purchased the land in question after inspection of revenue record, wherein, Raj Rani was shown to be owner to the extent of 1/4th share, i.e., w.e.f.1984-85, therefore, the appellants are bonafide purchasers for a valuable consideration and entitled to seek protection under Section 41 of the Transfer of Property Act. The plaintiffs sat over the matter for almost 16 years and have not given any explanation for not challenging the order and took the opportunity to raise the cause of action when sale deeds dated 14.10.1999 came into being and thus, urges this Court to formulate the following substantial questions of law arise for adjudication of the present appeal as culled out in the memorandum of appeal which read thus:-

- “i) Whether the order of partition dated 7.4.1980 passed by the competent authority in accordance with law and statutory provisions as per the admission of the parties, can be challenged in the civil suit after a period of 19 years?*
- ii) Whether the suit challenging order dated 7.4.1980 is barred by limitation?*
- iii) Whether the rights of the appellants being bonafide*

purchasers of the suit property are protected under Section 41 of the Transfer of Property Act?

iv) Whether order dated 7.4.1980 and subsequent entry in the revenue record can be said to be illegal and ministerial error when the said order was based on compromise between the parties as statements of the parties were duly recorded?"

Whereas, on the other hand, Mr.C.B.Goel, learned counsel appearing on behalf of the respondent-plaintiffs submits that suit cannot be said to be barred by law of limitation as they were not aware of the alienation made by defendants No.1 and 2, vide sale deeds Ex.D1, Ex.D11 and Ex.D12 when the vendors started interfering into possession, suit was filed by invoking the provisions of Article 58 of the Limitation Act. He further submits that Banarsi Dass was owner of land measuring 10 kanals 11 marlas. From his earlier marriage with Vidya Devi, he had three sons, namely, Ram Sarup, Rameshwar Dass, Bimal Parshad - plaintiffs and one daughter Smt. Raj Rani. Raj Rani was married to Kailash Chand Sharma. She had a son and daughter, defendants No.1 and 2. After the death of his first wife Smt. Vidya Devi, he got married to one Sona Devi and from the said marriage, two sons, namely, Yudhister and Manoj and one daughter Smt.Sharda Devi were born. Banarsi Dass died on 09.07.1976. He left behind three sons, i.e., plaintiffs No.1 to 3 and a daughter, i.e., mother of defendants No.1 and 2.

From his earlier wife and two sons Yudhister, Manoj and one daughter Sharda Devi and Sona Devi widow of Banarsi Dass from the later marriage the succession opened at the time of death of Banarsi Dass, his share comes to $1/7^{\text{th}}$ by application of notional partition devolved upon the sons, daughters and widow to the extent of $1/7^{\text{th}}$ share + $1/9^{\text{th}}$ share = $1/56^{\text{th}}$ share, whereas, the share of co-parceners in the land came to be $1/56^{\text{th}}$ share. The plaintiffs had been in possession of the suit land and it was only disturbed at the time of delivery of the possession handed over to the vendees and therefore, the consequential relief of injunction had been sought. The property was ancestral, wherein, sons would be co-parceners. The Lower Court wrongly relied upon the mutation No.1084 (Ex.P17) and thus urges this Court for affirming the findings rendered by the Lower Appellate Court.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is merit and substance in the submission of Mr. Pritam Saini, for, sale deed dated 04.12.1981, Ex.P15 reveals that plaintiff had acknowledged the factum of partition as he sold his share which had fallen to him in the partition proceedings. Even thereafter, the plaintiffs were in slumber for almost 18 years and allegedly invoked the cause of action when the aforementioned sale deeds, i.e., Ex.D1, Ex.D11 and Ex.D12 were effected and filed the suit. In my view, the plaintiffs were/are estopped to challenge the

partition proceedings as parties were already put in respective possession and this fact was noticed in the jamabandi for the 1984-85 till 1995-96. The Lower Appellate Court has erroneously not noticed the aforementioned fact, thus, there is illegality and perversity in the findings. These facts are enough for non-suiting the plaintiffs, thus, discretion has rightly been exercised by the Lower Appellate Court. In my view, the suit was ex facie barred by law of limitation as *sanad takshim* and the partition proceedings were passed way back on 07.04.1980. Even jamabandi as mentioned above which prima facie showed the factum of partition and then it was not enjoined upon to embark upon the determination the respective shares as it tantamounts to unsettling the settled controversy.

For the foregoing reasons, the judgment and decree of the Lower Appellate Court is set aside and that of the trial Court is restored, in essence, suit stands dismissed. The substantial questions of law, as noticed above are answered in favour of the appellant-defendants and against the respondent-plaintiffs.

Resultantly, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

May 16, 2016
savita