

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

Regular Second Appeal No.135 of 2010 (O&M)

Date of Decision: March 30, 2016.

Amarjit Singh

.....APPELLANT(s).

VERSUS

Swaran Lata and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ritesh Pandey, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal filed by Amarjit Singh, defendant No.16 against the judgment and decree passed by Additional Civil Judge (Senior Division), Hoshiarpur, whereby suit of the plaintiff, was decreed for declaration that plaintiff along with defendants No.1 to 7 is owner in possession of abadi area measuring 1 kanal 15 marlas comprised in khewat No.65, khatauni No.77 bearing khasra No.702/403 (0K-17M) and 703/403 (0K-18M) situated in village Rahalli, Tehsil Garhshankar, District Hoshiarpur.

2. The case of the plaintiff, in brief, is that the property in dispute was originally owned by Banta Ram and after his death, it was inherited by his sons Girdhari Lal and Ram Kishan in equal shares. After the death of Ram Kishan, his 1/2 share in suit property, was inherited by plaintiff and defendants No.1 to 7 in equal shares. Girdhari Lal son of Banta Ram is

owner of remaining 1/2 share of the suit land. Defendants No.9 to 16 have

no right, title or interest in the suit property. The plaintiff, in order to separate her 1/14th share in the suit property, has asked the defendants to partition the same but her request was not acceded to, hence, this suit.

3. Defendants No.1 to 7 admitted the claim of plaintiff and pleaded that they want their share to be partitioned but defendants No.8 to 16 be restrained from interfering in their possession.

4. The suit was contested by defendants No.8 to 12, 14 to 16, wherein they alleged that the suit property is situated in abadi deh, as such, has gone out of the provisions of revenue laws. In the family partition, the parties have already partitioned the suit land and are in possession of their separate shares and have also constructed their houses over it. Earlier the defendants have filed a suit bearing No.560 of 1987 titled as '*Simar Kaur alias Simor and others Vs. Jog Raj and others*' pertaining to the plot in their possession i.e. ABCD which was decreed and the appeal filed by defendant Girdhari Lal, Jog Raj and Ashok Kumar was dismissed.

5. This fact is admitted that in the revenue record, plaintiff, defendants No.1 to 8 are recorded to be owner of the suit land. During the course of arguments, learned counsel for the appellant could not refer to any document on file either to connect the plot ABCD which was subject matter of civil suit No.560 of 17.12.1987 decided on 09.10.1983 with the suit property bearing khasra No.702/403 and 703/403 or to show that the appellant, in any manner, is concerned with this property or having any share in it.

6. Learned counsel for the appellant, while referring to the judgment dated 09.10.1993 (Ex.D4) titled as '*Simar Kaur alias Simor and*

others Vs. Jog Raj and others' passed in civil suit No.560 of 17.12.1987, has argued that the suit land was held to be jointly owned by heirs of Punnu, who was common ancestor of the parties. He argues that in that suit, Girdhari Lal son of Banta Ram had taken the plea that the plot in dispute in that suit and marked as ABCD, was part of khasra No.702/403 which signifies that suit land is joint of the parties. The appellant has constructed his house over the disputed plot and is in possession of the same being co-owner.

7. The revenue record placed on file do not support the contention of appellant. In the jamabandies for the year 1994-95 (Ex.P2), 1973-74 (Ex.P5), 1989-90 (Ex.P6), the suit land is shown as owned by Banta Ram and thereafter by sons of Banta Ram. Civil suit No.560 of 17.12.1987 pertained to a plot marked as ABCD. The plea of the defendants in that case that the plot form part of khasra No.702/403 was discarded by the Court, as such, appellant cannot take benefit of judgment (Ex.D4) to connect suit land with plot ABCD in dispute in earlier suit. Even otherwise, the appellant was not party to that suit.

8. During his lengthy arguments, learned counsel for the appellant could not point out any document to show or prove that the appellant has any share in the suit land.

9. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

10. No substantial question of law requiring determination arises in this appeal, which has no merits.

11. Dismissed.

(SURINDER GUPTA)
JUDGE

March 30, 2016.