

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2462 of 2010 (O&M)

Date of Decision: November 22, 2016

Jagtar Singh & others

...Appellants

Versus

Joginder Kaur & others

...Respondents

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

Present: Mr.Harkesh Manuja, Advocate,
for the appellants.

Mr.Namit Gautam, Advocate,
for respondent Nos.1 to 5.

AMIT RAWAL, J. (Oral)

The short point involved in the present appeal is whether 4 marlas of land purchased by the appellants independently than the share of their father-defendant No.36 by virtue of sale deed dated 25.11.1999 (Ex.DW8/A) from Ajmer Singh son of Ganda Singh out of his total land measuring 46 marlas would be part of the preliminary decree or not.

Mr.Harkesh Manuja, learned counsel for the appellants submits that the suit for partition was filed in respect of small chunk of land out of the total land measuring 25 kanals 4 marlas, but the Court has granted the judgment and decree in respect of the entire land by determining the shares of the respective parties and in this regard drawn the attention of this Court to pages 50 and 51 of the paper book, i.e., the judgment of the trial Court, whereby defendant No.36 (since deceased) and appellants being his legal heirs have been held entitled to four share, i.e., 4 marlas. He submits that the appellants have purchased another 4 marlas of land, independently, vide

sale deed dated 25.8.1999 (Ex.DW8/A) from Ajmer Singh son of Ganda Singh, but in the judgment of the trial Court, Ajmer Singh son of Balbir Singh along with others, who are defendant Nos.24 to 30, have been held entitled to 46 marlas, i.e., 46 share. There is no determination with regard to 4 marlas out of 46 marlas of land and in this backdrop of the matter, the present appeal has been filed.

He further submits that the Lower Appellate Court, while allowing the appeal, has given the following findings:-

“24. Second contention of the learned counsel for the appellants is that they have purchased 4 marlas of land vide sale deed Ex.DW8/A from Ajmer Singh son of Ganda Singh through Harnek Singh son of Didar Singh (general power of attorney) and mutation No.7683 has also been sanctioned in their favour on 25.11.1999. In that respect, I have to say that since share of the parties were determined by virtue of the jamabandi for the year 1986-87 Ex.P2 in which Ajmer Singh son of Balbir Singh along with others, who are defendants No.24 to 30 were having 46 marlas of share and their share has been determined in para No.31 of the impugned judgment and if it is the case of the appellants that they have purchased 4 marlas of land from said Ajmer Singh, their rights are well protected by the judgment and decree and they can resort to the remedy available to them while passing final decree.”

Thus, the findings need to be clarified as per the Fard Badar No.2 and parentage of Ajmer Singh son of Ganga Singh stood corrected.

Mr.Namit Gautam, learned counsel for respondent-defendant Nos.1 to 5 submits that in the suit, their share has been kept intact and they have no dispute with regard to the aforementioned claim of the appellants.

Even Ajmer Singh would not have because the sale deed dated 25.11.1999 (Ex.DW8/A) has not been challenged so far and has got the nod of the

Court, much less being registered document carries a presumption of truth.

In rebuttal, Mr.Manuja submits that Ajmer Singh is not aggrieved of the aforementioned sale deed and, therefore, would not have any grievance as the judgment of the Lower Appellate Court needs little clarification.

I have heard the learned counsel for the parties, appraised the paper book and of the view that once the appellants have independently purchased land measuring 4 marlas vide sale deed dated 25.11.1999, they have not become owners over and above the share which they have derived from their father of land measuring 8 marlas, i.e., 4 + 4. The apprehension of the appellants vis-a-vis segregation of their share at the time of drawing of the preliminary decree is misplaced as the Lower Appellate Court, in my view, has taken into consideration the possession not for the purpose of drawing the final decree. The appellants would be at liberty to point out the possession of 4 marlas of land purchased vide sale deed, aforementioned, to the concerned Local Commissioner for the purpose of partition so that the Local Commissioner shall take into consideration the possession and submit his report regarding the partition taking into consideration the respective possession of the parties and entitlement as per the sale deed.

With the aforementioned observations, the judgment and decree of the Lower Appellate Court is upheld and the appeal stands disposed of.

November 22, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No