

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

**RSA-2196-2011 (O&M)
Date of decision : 29.09.2016**

Ram Singh and others

... Appellants

Versus

Gurdev Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Singla, Advocate
for the appellants.

Mr. G.S. Bhatia, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondents-plaintiffs has been decreed, though, the trial Court had dismissed the same.

Mr S.K. Singla, learned counsel appearing on behalf of the appellants-defendants submits that the judgment and decree of the lower Appellate Court is not only fallacious, but perverse. Plaintiff Nos.1 & 2 had 1/8th share. The partition proceedings culminated on 18.01.1988, wherein, the respondent(s)-plaintiff(s) participated, even, Naksha 'Urda' was prepared, therefore, no objection, qua the same, was ever raised. All these proceedings of 1988 have been challenged in the year 1997. The trial Court dismissed the suit on the following grounds:-

1. Estoppel.

2. Trial

3. Partition proceedings

4. Limitation

and has also held that the Court did not have jurisdiction as no irregularity in the partition proceedings conducted by the revenue court was made out or established. He submits that in view of such fact, the lower Appellate Court could not have decreed the suit as the defendant(s) was left with no share in the property. The suit was not maintainable. The alleged 'fard fadar' i.e. correction in the revenue record was corrected at back and therefore, the same could not have been looked into. All these facts have erroneously been ignored by the lower Appellate Court, thus, there is illegality and perversity and prays for setting aside the judgment and decree under challenge.

Per contra, Mr. G.S. Bhatia, learned counsel appearing on behalf of respondent No.2-plaintiff submits that the sale deed dated 23.12.1980 is of 1/8th share, out of 9 bighas 8 biswas. The revenue court did not mention this fact, though record revealed and accordingly, an application, in this regard, was submitted and rightly so, 'fard badar' was corrected. Though, the father of the plaintiff(s) was impleaded as respondent in the partition proceedings, impression was that once, he was co-owner, obviously, the partition proceedings would be amongst the co-owners, but, by realizing the aforementioned fact, 1/8th share has also been included in the partition proceedings and as a result thereof, even the plaintiff(s) was left no share in the property. It is, in this background of the matter, the suit, aforementioned, was filed. The limitation would start from the date of the order of Financial Commissioner dated 12.03.1997, even otherwise, there is no limitation qua title, thus, the question of estoppel

would not arise. There is no illegality and perversity in the findings rendered by the lower Appellate Court, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that findings rendered by the lower Appellate Court are perfect, legal and justified. It is a matter of record that the plaintiff-Lal Singh was co-owner of 1/8th share in the land measuring 75 bighas 6 biswas as per the jamabandi for the year 1995-96. He sold his share in the land measuring 75 bighas 6 biswas vide sale deed dated 23.12.1980 in favour of other co-owners-Ram Singh and others-defendants. Even after the execution of the sale deed, the plaintiff was left 1/8th share in the land measuring 9 bighas 8 biswas out of joint holding. However, while preparing the jamabandi for the year 1980-81 (Ex.P-2), the mistake was corrected, but his name was not reflected. It is, in this backdrop of the matter, the application was moved and 'fard badar' was corrected. In my view, the findings of the trial Court was not in accordance with law regarding the jurisdiction of the Court as the provisions of Punjab Land Records Manuals as noticed by the lower Appellate Court, are applicable, for, farad can always be corrected in case there is an apparent mistake. Even in the jamabandi for the year 1980-81, the possession of the plaintiff(s) was recorded in the land measuring 6 bighas 5 biswas compromising of khasra No.63 as co-sharer, therefore, the partition proceedings tantamount to divesting the ownership of the plaintiff(s) which is not the scope of the partition proceedings, rightly so, the aforementioned proceedings were instituted. Instrument of partition (Ex.P-7) shows that the plaintiff(s) was not allotted any land despite the fact that he was reflected

co-owner in the jamabandi 1983-84, thus, there was an apparent mistake.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination and accordingly, the appeal is dismissed.

29.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No