

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1695 of 2012 (O&M)

Date of Decision: December 13, 2016

Partap Singh & another

...Appellants

Versus

Joginder Singh

...Respondent

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

Present: Mr.Vaneet Soni, Advocate,
for the appellants.

Mr.R.K.Arya, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved of the judgment and decree of the Lower Appellate Court, whereby the suit seeking the following relief had been decreed, in essence the judgment and decree of the trial Court dismissing the suit, has been set-aside:-

“Suit for possession by way of partition of ½ share of the plaintiff from the land measuring 1 kanal 1 marla comprised in Khewat No.62, Khatauni No.103, 104, Khasra No.107/1 (0-10), 107/2 (0-11), situated in the revenue estate of village Chhina Bet Tehsil and District Gurdaspur H.B.No.646 as entered in the jamaband for the year 1996-97 with consequential relief of permanent injunction restraining the defendants from raising any type of construction and encroachment over the land in suit and also restraining the defendants from alienating, mortgaging and disposing off in any manner specific portion and more than their share from the suit property illegally, forcibly without partition the suit property.”

Mr.Vaneet Soni, learned counsel for the appellant-defendants

submits that the trial Court, on the basis of the preponderance of the evidence, found that both the parties are in separate possession and, therefore, there was already a private partition amongst them and dismissed the suit. However, the Lower Appellate Court has erroneously reversed the findings without there being any evidence. Since the parties are in separate possession, the partition by metes and bounds will unnecessarily disturb the possession and cause inconvenience to the parties and, thus, there is gross illegality and perversity.

Mr.R.K.Arya, learned counsel for the respondent-plaintiff submits that no doubt the parties had been in separate possession, but the Khewat was joint and since the Khewat is joint, an irresistible conclusion is that both the parties are co-owners and it is in this respect of the matter, suit for partition has been decreed. In support of his contention, he has relied upon the ratio decidendi culled out by the Full Bench of this Court in **Ram Chander Versus Bhim Singh & others**, 2008 (3) R.C.R. (Civil) 685 (Paras 18 to 23).

I have heard the learned counsel for the parties and appraised the paper book.

So far, no application for drawing the final decree has been moved. It is settled law that once there is a joint khewat and a co-owner sells the land from joint khewat, vendee would become a co-owner even if there is an arrangement of separate possession, but the Khewat remains joint and the property would be held to be joint. It is in this backdrop of the matter, the Lower Appellate Court decreed the suit. The aforementioned view of mine is supported by the ratio decidendi culled out by the Full Bench in **Ram Chander's case (supra)**.

Mr.Soni, during the course of the hearing, submits that the parties are in their respective possession. In case any application for drawing the final decree is moved, the respective possession may be kept intact. This is not disputed by Mr.Arya.

Accordingly, the judgment and decree of the Lower Appellate Court is upheld. In case any application for drawing the final decree is filed, the Court, while allowing the same, shall indicate and notice the separate possession of the parties, so that the same is not disturbed and in case there is marginal difference, the dispute can be resolved by determining the market value of the property in view of the provisions of Sections 3 and 4 of the Indian Partition Act.

Appeal stands disposed of.

December 13, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No