

Regular Second Appeal No.4374 of 2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: June 02, 2016

1. R.S.A.No.4374 of 2011 (O&M)

Jagdeep Kapoor alias Jaideep Kapoor & another

...Appellants

Versus

Swinder Kaur & others

...Respondents

2. R.S.A.No.4646 of 2011 (O&M)

Surat Singh & another

...Appellants

Versus

Gurnam Singh & others

...Respondents

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

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

Present: Mr.Premjit Kalia, Advocate,
for the appellants in RSA No.4374 of 2011.

Mr.H.S.Batth, Advocate,
for the appellants in RSA No.4646 of 2011.

Mr.Tarundeep Kumar, Advocate for
Mr.D.S.Pheruman, Advocate,
for respondent Nos.1 & 2 in RSA No.4374 of 2011 &
for respondent Nos.2 & 5 in RSA No.4646 of 2011.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals bearing No.4374 of 2011 at the instance of defendant No.8 and 4646 of 2011 at the instance of defendant Nos.11 and 12 against the judgment and decree of the Lower Appellate Court, whereby preliminary decree in a suit for partition of land in dispute has been passed by setting-aside the judgment and decree of the trial Court, whereby the suit was dismissed.

Mr.Premjit Kalia, learned counsel for the appellants in RSA No.4374 of 2011 and Mr.H.S.Batth, learned counsel for the appellants in RSA No.4646 of 2011 submit that the suit for partition of the land at the instance of the plaintiffs in respect of the following land was sought:-

“Suit for declaration to the effect that plaintiffs are owners in possession of land measuring 39 marlas i.e. 79/108 share of land measuring 2 kanals 14 marlas bearing khata khatoni No.184/498, 499, Rect.and Killa No.202//19/33, 22/1/2, situated at village Valtoha, Tehsil Patti, District Amritsar as per Jamabandi for the year 1998-99.

In the alternative suit for partition and delivery of possession of 79/108 share by meets and bounds of plot measuring 2 kanals 14 marlas bearing khata khatoni No.184/498, 499 Rect and Killa No.202//1/33, 22/1/2, situated at village Valtoha, Tehsil Patti, District Amritsar as per jamabandi for the year 1998-99 and as shown red in the

site plan attached, bounded as follows:-

East Road

West Street

North Amarkot-Bahadar Nagar

South Patti-Khem Karan Road

With consequential relief of permanent injunction, thus restraining the defendant nos.1 to 31 from alienating the property mentioned above more than their share and also from raising construction and making improvement over the plot mentioned above without getting it partitioned.”

However, during the cross-examination and as well as vide Ex.D5, Ex.D6 and Ex.D7, it has been proved on record that there was other land of the co-sharers which has not been included. The trial Court, after noticing jamabandies, Ex.D5, Ex.D6 and Ex.D7, dismissed the suit holding it to be bad for partial partition. However, the Lower Appellate Court, being the last Court of fact and law, has not examined the aforementioned documents and decreed the suit and, thus, there is illegality and perversity, much less misreading of the documentary evidence and, thus, urge this Court for formulation of the following substantial questions of law:-

- 1) Whether the suit for partition in the absence of inclusion of other property is maintainable?
- 2) Whether the suit, aforementioned, would be hit by doctrine akin to partial partition?

Mr.Tarundeep Kumar Advocate for Mr.D.S.Pheruman, Advocate, appearing on behalf of respondent Nos.1 and 2 submits that though the Lower Appellate Court was enjoined upon an obligation to refer all the documents and on failure to do so, the matter can be remanded back for re-adjudication. He further submits that the plaintiffs have failed to prove that there was other land which belonged to the co-sharers and, therefore, the suit was not hit by doctrine akin to partial partition and, thus, prays for dismissal of the appeals.

I have heard the learned counsel for the parties and appraised the paper book and of the view that it would be total farcical exercise by remanding the matter back to the Lower Appellate Court as jamabandies for the year 1993-94 (Ex.D5), 1978-79 (Ex.D6) and 1983-84 (Ex.D7) provide that there were other parcels of land of the co-sharers, which have not been included in the suit. Even this fact has been admitted by the plaintiff in the cross-examination, copy of which has been annexed as Annexure A-1, whereby other parcel of land measuring 21 kanals 14 marlas, which was Gair Mumkin in village Valtoha, has not been included. It is settled proposition of law that it does not require any repetition or re-consideration that suit for partial partition is not maintainable.

For the foregoing reasons, the Lower Appellate Court has

failed to advert to the aforementioned documents, therefore, there is illegality and perversity. Accordingly, the judgment and decree of the Lower Appellate Court is set-aside and the judgment and decree of the trial Court is restored. The questions of law, noticed above, are answered in favour of the appellant-defendants and against the respondent-plaintiffs.

Appeals stand allowed.

June 02, 2016
ramesh

(AMIT RAWAL)
JUDGE