

Regular Second Appeal No.4899 of 2012 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4899 of 2012 (O&M)
Date of Decision: September 19th, 2016

Mohan Lal

...Appellant

Versus

Purshotam Kumar and others

...Respondents

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

Present: Mr.Puneet Bali, Senior Advocate with
Mr.Ranjit Saini, Advocate,
for the appellant.

Mr.Ravish Bansal, Advocate,
for respondent No.1.

AMIT RAWAL, J.

Appellant-defendant No.1 is aggrieved of the judgment and decree of the Lower Appellate Court, whereby the suit instituted at the instance of the respondent-plaintiffs qua partition has been decreed, though vis-a-vis relief of declaration for setting-aside the revenue entries and Rapat Roznamcha No.313 dated 26.3.1984 has been dismissed being barred by law of limitation.

Mr.Puneet Bali, learned Senior Counsel assisted by

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Mr.Ranjit Saini, representing appellant-defendant No.1, in support of the grounds of appeal, has raised the following manifold arguments:-

1) Khewat No.178 consists of 103 kanals 7 marlas, whereas the partition has been sought of only 4 kanals 14 marlas of land. In fact, Basanti Devi, vide sale deed dated 7.5.1968, had sold land measuring 4 kanals 14 marlas bearing Khewat No.76, Khatoni No.93, 94 and 95, Khasra No.184//7/2 (3-12), 8/1(1-2) out of total land measuring 127 kanals 7 marlas, as per jamabandi for the year 1962-63, i.e., 1/6th share out of 21 kanals 4 marlas, i.e., 94/424 share which comes to 4 kanals 14 marlas and thereafter to Banwari Lal, father of appellant-defendant No.1 and had put him into specific possession of Khasra No.184//7/2 (3-12), 8/1(1-2);

2) The plaintiffs are none else but the grand sons of Basanti Devi, who had inherited the remaining property of their grand mother. Father of appellant-defendant No.1 remained in possession of the aforementioned property till his death and thereafter appellant-defendant No.1 came into possession of the same pursuant to the decree dated 20.10.1987 passed in civil suit titled as “Mohan Lal Versus

Sat Rup;

- 3) Neither Basanti Devi nor L.Rs challenged the entries, much less possession of the defendant during his life time. The suit had been filed in the month of July, 2001 asserting therein that the entries were illegal and wrong on the premise that Rapat Roznamcha No.313 dated 26.3.1982 was illegal, null and void as the aforementioned entry was got done by Banwari Lal in connivance with the revenue officials by recording him as a co-sharer. In fact, the aforementioned entries were without notice and consent of the other co-sharers;
- 4) The entries in the jamabandies for the years 1983-84, 1988-89, 1993-94 and 1998-99 are based on wrong entries;
- 5) The trial Court, on the basis of the oral and documentary evidence, dismissed the suit, but the Lower Appellate Court vis-a-vis the relief qua revenue record and Rapat Roznamcha dismissed the suit, but granted partition. In fact, the suit was hit by partial partition;
- 6) During the pendency of the matter, the plaintiffs had sold some piece of land vide sale deed dated 14.11.2006 to plaintiff No.5, who is none else but an Advocate. It is plaintiff No.5 who had filed the appeal before the Lower

Appellate Court;

7) The entire khewat is consisting of 103 kanals 7 malas and since the land agreed to be sold is Banjar Jadid, therefore, cannot be said to be non-agricultural and, therefore, the Civil Court as per the provisions of sub-section (2) of Section 158 of the Punjab Land Revenue Act, 1887 (for short “1887 Act”) did not have the jurisdiction and the suit was hit by law of limitation;

8) The Lower Appellate Court has relied upon the judgment rendered by the Single Bench of this Court in **Khushal Singh and others Versus Gurdip Singh and others, 1987 PLJ 369**, which has been held to be no longer good law by the Division Bench of this Court in **Fauja Singh Versus Pritam Singh, 1993(2) RRR 69**;

9) The question, which arises for consideration, is whether as per the averments of the plaintiffs, the land which is Banjar Jadid would be out of the realm of provisions of Section 111 of 1987 Act seeking partition for agricultural land or not or whether the expression used in Section 158 of 1987 Act regarding the estate would include the entire chunk of land situated in the village including the

joint khata. In support of his contention, he has drawn the attention of this Court to the findings rendered by the Division Bench of this Court in **Fauja Singh's case (supra)** to contend that the word “land” has been defined in Section 4 of the Punjab Tenancy Act, 1887, whereas the “estate” has been defined in Section 3. The language in clause (xviii) of sub-section (2) of Section 158 of 1887 Act debars the jurisdiction of the Civil Court, much less any claim for partition of an estate, holding or tenancy and not with regard to the land and, therefore, the Civil Court did not have the jurisdiction. In support of his contention, he has relied upon para 10 of the aforementioned judgment;

10) As regards the partial partition, Mr.Bali has relied upon the judgment rendered by the Hon'ble Supreme Court in **Kenchegowda (since deceased) by legal representatives Versus Siddegowda alias Motegowda, (1994) 4 Supreme Court Cases 294 and Nihalu and another Versus Chandar and others, AIR 1959 Punjab 115** to contend that one of the co-owners in a suit for partition shall include whole of the common property even though interests of the purchaser are confined to some specific part thereof, in

essence the person seeking the partition should bring before the Court all persons having right in the property, for then alone can the rights of the co-owners and of purchasers from co-owners be properly and effectually adjudicated upon;

11) With regard to jurisdiction of the Civil Court, he has relied upon the judgment rendered in **Kidra and others Versus Mange and others, 2001 (2) PLJ 213**. He submits that the suit was, *ex-facie*, barred by law of limitation qua seeking entry in the revenue record and relied upon the provisions of Article 58 of the Indian Limitation Act and in this regard, relied upon the judgment rendered in **Saudagar Singh Versus Harnam Kaur (deceased) now Rep.by L.Rs & Ors, 1987 PLJ 248**;

12) He submits that even the suit under Section 45 of 1887 Act was not maintainable as the pre-requisite for maintaining the suit, a person must be in possession of the land. However, it is the pleaded case of the respondent-plaintiffs that they were not in possession of the land and the entries regarding khasra girdawri, jamabandi and Rapat Roznamcha have been challenged. The plaintiffs cannot even take the benefit of the ratio decidendi culled out by the

Division Bench of this Court in **Ibrahim alias Dharam Vir Versus Smt.Sharifan alias Shanti, 1979 PLJ 469** on the premise that they were in the knowledge of the factum regarding the possession and, therefore, the limitation cannot be said to have been arrested, but continued to run and, thus, urges this Court for setting-aside the judgment and decree under challenge rendered by the Lower appellate Court;

13) The sale deed in favour of plaintiff No.5 is in respect of some other khasra number, though of a different share. It is strange that if the share is different, i.e., 77/94, how can plaintiff sell the same very khasra number.

14) Qua declining of the relief holding the suit being barred by law of limitation, there is no appeal at the instance of the respondent-plaintiffs. Even the partition granted is not as per the contents of the sale deed and, thus, urges this Court for formulating the following substantial questions of law for determination by this Court:-

a) When suit land is part of one khewat No.178 consisting of 103 kanals 7 marlas, whether findings of Additional District Judge to the effect that suit land is not an

agricultural land are sustainable in law especially when suit land bears khasra numbers and revenue record is being maintained in respect of that?

b) Whether Civil Court has jurisdiction to partition the agricultural land?

c) Whether the partition partition is permissible?

Per contra, Mr.Ravish Bansal, learned counsel appearing on behalf of respondent No.1 submits that the Division Bench in **Fauja Singh's case (supra)**, has reiterated the ratio decidendi culled out in **Sucha Singh Versus Balbir Singh, 1964 PLJ 160**. He submits that since the land in dispute is Banjar Jadid, as per the ratio decidendi culled out in **Ajmer Singh Versus State of Haryana, 1990(1) R.R.R. 109**, the same would be falling within the purview of definition of “land” under the Act and cannot be said to be for agricultural purposes or purposes subservient to agriculture. On similar line is the judgment of the Division Bench of this Court in **Nemi Chand Jain Versus Financial Commissioner, Punjab and another, 1964 AIR (Punjab) 373**.

He further submits that since respondent-plaintiff No.5 has purchased the share from the plaintiffs, his status is of a co-sharer in the joint khewat. In fact, once the land agreed to be sold is Banjar Jadid and

jurisdiction to entertain and try the suit, for, had the petition before the Revenue Court by invoking the provisions of Section 111 of the Act including the entire land, been filed, the objection under Section 158 of 1887 Act would have immediately been taken, in essence, since the land is not agricultural, therefore, the Civil Court would have the jurisdiction and as well as for the remaining land, it is only the Revenue Court where the party can seek the partition and, therefore, the suit cannot be said to be hit by doctrine akin to “partial partition”.

He further submits that for entertaining the application under Section 111 of 1887 Act, the language used therein is plain and simple. For the sake of brevity, Section 111 reads thus:-

“Application for partition.- Any joint owner of land, or any joint tenant of a tenancy in which a right of occupancy subsists, may apply to a Revenue Officer for partition of his share in the land or tenancy, as the case may be, if-

- (a) at the date of the application the share is recorded under Chapter IV as belonging to him; or*
- (b) his right to the share has been established by a decree which is still subsisting at that date; or*
- (c) a written acknowledgment of that right has been executed by all persons interested in the admission or denial thereof.”*

On perusal of the aforementioned provisions, Mr.Bansal

submits that the expression “land” is used and, therefore, the Civil Court

had the jurisdiction and, thus, urges this Court for dismissal of the appeal.

In rebuttal, Mr.Bali has relied upon the provisions of Article 31A of the Constitution of India to contend that it is a saving of laws providing for acquisition of “estates” and certain guidelines have been issued for the purpose of acquisition. He has also relied upon the judgment rendered by the Hon'ble Supreme Court in **Dhanraj Singh Choudhary Versus Nathulal Vishwakarma, (2012) 1 Supreme Court Cases 741** regarding the conduct of the lawyer by referring to the provisions of Sections 35 and 36 of the Advocates Act, 1961. For the sake of brevity, Article 31A of the Constitution reads as under:-

*31A. Saving of laws providing for acquisition of estates, etc
(1) Notwithstanding anything contained in Article 13, no law providing for*

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by (Article 14 or Article 19)

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article,-

(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

- (i) any jagir, inam or muqfi or other similar grant and in the States of [Tamil Nadu] and Kerala, any janmam right;*
- (ii) any land held under ryotwari settlement;*
- (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]*

(b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder [raiyyat, under raiyyat] or other intermediary and any rights or privileges in respect of land revenue.]”

In fact, plaintiff No.5 was/is none else but an Advocate of the plaintiffs, who had purchased the property during the pendency of the suit, thus, it was a total professional misconduct and against the ethics. There has to be a strict adherence to the aforementioned provisions and, thus, urges this Court for allowing the appeal.

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

I am in agreement with the submission of Mr.Bali that the

suit was hit by doctrine akin to partial partition. There is no dispute to the fact that Khewat No.178 is comprising of 103 kanals 7 marlas. The partition has been sought only of 4 kanals 14 marlas. I am also in agreement with the ratio decidendi culled out by the Hon'ble Supreme Court in the judgment cited supra that partial partition cannot be permitted as all the co-owners, who have interest and right in the property, have to be arrayed for adjudication of the lis. In case, I have to accept the argument of Mr.Bansal, it will lead to a very analogous situation, for, Civil Court would have jurisdiction and for rest of the land, it is the Revenue Court which would entertain the application under Section 111 of 1887 Act. There is every possibility of having a different finding. Consistent view is that the partition should be sought for entire property and not in piece-meal.

This Court has come across many cases where joint property situated at different States and major share holding is in one district, even then the parties can seek partition, but for doing so, they have to include the entire property located at different State/district in order to overcome the objection of partial partition. Similar situation is with regard to jurisdiction, where the parties cannot segregate with the partition proceedings with regard to the land described as Banjar Jadid and agricultural land.

The trial Court had rightly dismissed the suit on this ground, but the Lower Appellate Court, in my view, has erroneously and perversely rejected the plea of the appellant, yet despite giving the observations in paragraph 31 of the judgment, description of the property. For the sake of brevity, para 31 of the judgment of the Lower Appellate Court reads thus:-

“As per the appellant/plaintiff version the suit property measuring 4 kanals 16 marlas is a part of a Khewat no.178 comprised of total land 103 kanals 7 marlas including the suit property. The other land is agricultural land whereas the suit property is Banjar jaded land and 2 marlas land is also a part of gair mumkin land which is liable to be partitioned by civil Court.”

The reasoning assigned in Para 32 of the judgment with regard to maintainability, is no reasoning in the eyes of law. For the sake of brevity, Para 32 of the judgment reads thus:-

“It has been urged by learned counsel for the respondent that in this case the appellant/plaintiff has not sought partition of whole of the joint holdings and the instant suit is bad due to partial partition, so the suit for partition is not maintainable, however, this contention of learned counsel for the respondent no.1 does not hold much force as there is no dispute regarding proposition of law held in case titled

Kenchegowda (since deceased) by Legal Representatives Vs. Siddegowda, 1994(4), SCC 294; Govindrao son of Gangaramji Ajmire Vs. Dadarao @ Shrawan & Ors., 2004, Mh.L.J. 653 in which it has been held that the suit for partial partition is not maintainable without bringing into the common hotchpotch the entire joint house property of the parties. But in this case, learned counsel for respondent No.1 has miserably failed to show which property has been left by the appellant/plaintiff from being included in the suit for partition from civil Court. In this case, a perusal of Jamabandi for the year 1998-99 (Ex.P6) reveals that khasra No.184//7/2 and 8/1 are Banjar jadid land. Khasra No.954 has been shown as gair mumkin Gadda Khad in Jamabandi Ex.P1. The other land has been shown to be agricultural land. This fact has not been denied in the written statement by the respondent also. In case titled Prabhuram & Ors. Vs. Balbir Singh & Ors., R.S.A.No.3957 of 2009, it has been held that agricultural land excluding the suit property and khasra no.1428 being gair mumkin lajnd partitioned as per order dated 06.03.1998. Another application for partition of agricultural land was moved before revenue authority

excluding the suit property measuring 2 kanals 2 marlas and other land being gair mumkin land for which the partition would not lie before revenue authority. The suit is neither bad for partial partition or bad for joinder of necessary parties. In the case titled Pritam Singh Vs. Rup Lal and Others, 1986 P.L.J. 583, it has been held by Hon'ble Punjab & Haryana High Court that gair mumkin land and the land which is not used for agricultural purpose, the partition before revenue officer cannot continue and it is the civil Court who has jurisdiction to partition such land. In the case titled Sucha Singh & Ors. Vs. Balbir Singh, 1964 PLJ 160 it has been held by Hon'ble Punjab High Court that joint properties are of two kinds and their division has to be in two forums. The partition of non-agricultural property has to be done by Civil Court whereas the agricultural property has to be partitioned by revenue Court. Mere fact that the part of the property of the joint owners is not agricultural property will not lay upon the plea of partial partition. In the instant case, admittedly the suit property is a Banjar jadid land and can not be said to be used for agricultural purpose or purpose sub-servient to

agricultural. Reliance can be placed on the case titled Ajmer Singh Vs. State of Haryana (supra). There is nothing on record to show that the suit property is assessable to land revenue. So, it is only the civil Court who has power to partition the suit property. Since the civil Court has no power to partition the agricultural land and the counsel for respondents has miserably failed to show any other land which was not included in this case, so, the instant suit is not bad for partial partition. Reliance can be placed on the case titled Khushal Singh Vs. Gurdip Singh (supra). The appellant/plaintiff and other co-sharers are entitled to get the suit property partition as per their share in the joint land. The finding of learned trial Court is, hereby reversed.”

The next question, which poses in this Court, is whether an application for partition of the entire holding would lie in the Civil Court or before the revenue authorities. For the sake of brevity, the findings rendered by the Division Bench in **Fauja Singh's case (supra)** in paras 8 to 10 read thus:-

“8. The land has been defined in Section 4 of the Punjab Tenancy Act, 1887, which reads as under:

“Land” means land which is not occupied as the site

of any building in a town or village and is occupied or has been left for agricultural purposes or for purposes subservient to agriculture, or pasture, and includes the sites of buildings and other structures on such land.”

“Estate” has been defined in Section 3 of the Punjab Land Revenue Act, 1887 (hereinafter called the Act), which reads as under:-

“(1) “estate” means any area-

(a) for which a separate record-of-right has been made; or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land revenue has not been released, compounded for or redeemed; or

(c) which the State Government may, by general rule or special order, declare to be an “estate”.

9. In Section 112 of the Act restrictions and limitations have been placed on partition. Section 112 reads as under:-

“Notwithstanding anything in last foregoing sections

xxxxxxxxxx

(2) Partition of any of the following properties, namely;

xxxxxx

(c) any land which is occupied as the site of a town or village and is assessed to land revenue;

may be refused if, in the opinion of the revenue officer, the partition of such property is likely to cause inconvenience to the co-sharers, or other person directly

or indirectly interested therein, or to diminish the utility thereof to those persons.”

The land, which is part of an estate, cannot be partitioned by the Civil Court in view of Section 158 of the Act, which reads as under “Except as otherwise provided by this Court.

(1) a Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act to dispose of or to take cognizance of the manner in which the State Government or any Revenue Officer exercises any powers vested in it or him by or under this Act; and in particular-

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely;

xxxxxx

(xviii) any claim for partition of an estate, holding or tenancy, or any question connected with or arising out of proceedings for partition, not being a question as to title in any of the property of which partition is sought.”

10. It has been held by this court in Sucha Singh Vs. Balbir Singh, 1964 PLJ 160 that the land which is part of an estate cannot be partitioned by a civil Court. During the partition proceedings before the Revenue Officer, a co-sharer can raise an objection under Section 112 of the Act that the land which is occupied as the site of a town or village and is assessed to land revenue should not be partitioned because the same is likely to cause inconvenience to the co-sharers and other persons

directly or indirectly interested therein. In Khushal Singh's case (supra), partition proceedings continued before Tehsildar Dasuya and no objection under Section 112 of the Act was raised by the plaintiff and the land was partitioned by the Revenue Officer in accordance with the provisions of the Act. Therefore, civil suit filed by the plaintiff in Khushal Singh's case (supra) was not maintainable before the civil Court. The judgment of the learned Single Judge in Khushal Singh's case (supra) does not lay down a correct law. The law laid down by this Court in Sucha Singh v. Balbir Singh, by the Civil Court in view of the provisions of Section 158(2) of the Punjab Land Revenue Act, is upheld and the contrary view taken by the learned Single Judge in Khushal Singh's case (supra) is overruled."

On reading of the aforementioned findings, it has been held that the part of the estate cannot be partitioned by the Civil Court, in essence, part of the joint khewat has not been sought and, therefore, I am unable to scribe to the view of Mr.Bali that the jurisdiction of the Civil Court would not be there in view of the ratio decidendi culled out by the Division Bench of this Court in **Surjit Singh Versus Financial Commissioner Appeals-II, Punjab and others, 2012(5) R.C.R. (Civil) 683**, wherein, after discussing the ratio decidendi culled out in **Sucha Singh and Fauja Singh's cases (supra)**, in paragraph 8, it has been held

“8. After considering the submissions made by the counsel for the appellant, we do not find any force in the same. It is uncontroverted fact that after filing the partition application, the appellant himself has carved out plots on the land in their possession for residential purposes on which construction has been raised by the purchasers. This factum of large scale construction in and around the land in dispute and construction of roads and houses on the plots carved out has been confirmed by the Local Commissioner. Undisputedly, the subsequent development had taken place before the final order of partition was passed. Initially, at the time of confirmation of the mode of partition, the respondent raised objections in this regard.”

For the foregoing reasons, I am of the view that the Lower Appellate Court has not examined the aforementioned aspect in holding the suit to be maintainable as being hit by partial partition.

There is no challenge to the finding given by the Lower Appellate Court qua upholding the finding of the trial Court where the suit qua declaration of the entries and Rapat Roznamcha, *ibid*, has been held to be barred by law of limitation and, therefore, I would not delve or ponder upon the judgment cited by Mr.Bali regarding the limitation aspect.

For the foregoing reasons, the judgment and decree of the

Lower Appellate Court is hereby set-aside and that of the trial Court is

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restored. The suit is ordered to be dismissed being hit by doctrine akin to partial partition. This order will not entail the parties to seek the partition of the entire chunk of land (entire khewat) in accordance with law.

Accordingly, the questions of law, as noticed above, are answered in favour of appellant-defendant No.1 and against the respondent-plaintiffs.

Appeal stands allowed.

September 19th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No