

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

RSA No.661 of 2012 (O&M)

Date of decision : 05.12.2016

Lal Singh

...Appellant

Versus

Savitri and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate for the appellant.

Mr. Anil Rathee, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by both the Courts below, whereby suit seeking partition of the suit property in respect of following property, has been dismissed:-

“Claim for:- A decree for possession by way of partition to the effect that plaintiff is owner in possession of 9/16 share in the residential land comprised in Khewat No.135 Khatoni No.148 Rect. No.34 Killa No.1/1 (5-11), Khasra No.134 (0-4), 135/1 (0-11), 524 (0-2), Kite 4 measuring 6 kanals 8 marlas situated in the revenue estate of Village Sulodha, Tehsil and District Jhajjar.”

Mr. R.S. Sihota, learned Senior counsel assisted by Mr. B.R.

Rana, learned counsel appearing on behalf of appellant-plaintiff submits

that trial Court dismissed the suit on two counts. One that the Civil Court did not have jurisdiction for granting the partition in respect of agricultural land and secondly that since the father of the plaintiff, in a previously instituted partition suit, which was dismissed, suffered a statement that there were two other plots bearing Nos.133 and 134, therefore being hit by doctrine akin to partial partition. The lower Appellate Court also affirm the findings and also held that in view of statement Ex.D9 suffered in the previous suit, there was already partition but the fact remains that revenue record do not reflect any introduction or revelation of the oral partition and in the absence of any entry in the revenue record, the property at the hands of all the co-owners shall be treated as joint. In support of his contention, relies upon the ratio decidendi culled out by this Court in *Ram Chander Vs. Bhim Singh and others*, 2008(3) RCR (Civil) 685.

He further submits that in the part of the property, parties have raised their houses and, therefore, findings of the Court by invoking the provision of Section 158 of the Punjab Land Revenue Act is neither here nor there, much less, totally misplaced. In support of his contention, he relies upon the Division Bench of this Court in *Surjit Singh Vs. Financial Commissioner, Appeals-II, Punjab and others*, 2012(5) RCR (Civil) 683 and this fact has not been noticed by both the Courts below, particularly, lower Appellate Court being last Court of fact and law and, therefore, judgments are liable to be set aside.

He further submits that defendants did not place on record any material with regard to the ownership of other two plots, aforementioned, except Ex.D9, thus, they did not discharge the onus as onus of partial

partition is always on the defendants.

Mr. Anil Rathee, learned counsel appearing on behalf of respondents submits that concurrent findings of fact and law cannot be interfered until and unless there is gross illegality and perversity. Civil Court in respect of agricultural land would not have any jurisdiction as it is expressly barred as per the provision of Section 158(2) as noticed by this Court. Both the Courts below have already relied upon the statement by holding that parties have already arrived at arrangement and the arrangement continues, even if it is not reflected in the revenue record, partition shall deemed to have been affected and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that it is a fit case where matter is required to be remanded back to the lower Appellate Court being the last Court of facts and law who is required to re-examine the aforementioned provisions of law. When khata is shown to be joint, the presumption of separation cannot be drawn, until and unless there is direct, cogent and corroborative evidence. Ex.D9 is not conclusive evidence to form an opinion. Both the Courts below have heavily relied upon the aforementioned statement ignoring the documentary evidence. It is also conceded position that both the parties have raised their houses and nature and character of the property in entirety does not continue to be of agricultural though part of the same is being used for cultivation and, therefore, in view of ratio decidendi culled out in Surjit Singh's case (Supra), Civil Court would have jurisdiction.

I would not delve upon the merits with regard to the factum of

the partition as it would be the domain of the lower Appellate Court being last Court of fact and law.

Accordingly, judgment and decree of the lower Appellate Court is set aside. Matter is remitted back to the lower Appellate Court to decide the appeal in view of the findings rendered above i.e. in accordance with law.

Parties through their counsel are directed to appear before lower Appellate Court on 22.12.2016.

Accordingly, present appeal is disposed of.

This Court is sanguine of the fact that the lower Appellate Court shall decide the controversy as expeditiously as possible within a period of six months. As in case, if I delve on merits and demerits of the matter, it would seriously prejudice the right and the interest of parties, it tantamounts to taking away the statutory right of the first appeal.

05.12.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No