

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

**R.S.A No.13 of 2016 (O&M)
Date of decision :26.02.2016**

Kulvinder Singh and others

..... Appellants

Versus

Darshan Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Hitesh Kaplish, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred by the plaintiffs against the judgment and decree dated 29.07.2015 passed by the learned District Judge, Kapurthala, vide which the appeal preferred against the judgment and decree dated 15.01.2013 passed by the learned Addl. Civil Judge (Sr. Division), Phagwara has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellants-plaintiffs have filed the suit for declaration and permanent injunction on the grounds *inter alia* that they and defendant no.7 are owner in possession of the suit land in equal share, which they inherited from their ancestors. In the partition proceedings

Khasra No.735/3(4-9), which was in the exclusive possession of the plaintiffs and defendant no.7, was also included and the said khasra number was divided in two khasra numbers i.e. 735/3/2(3-13) and 735/3/1(0-16). The land measuring 16 Marlas of the plaintiffs and defendant no.7 has been wrongly allotted to the defendants no. 1 to 6 in the partition proceedings. The plaintiffs have not contested the partition proceedings as they were away to Uttar Pradesh and they came to know about the division of the aforesaid khasra number into two parts after obtaining the copy of jamabandi. Now, defendants no.1 to 6 are threatening to alienate the suit land and to take the possession thereof on the basis of wrong entry in the revenue record. Hence the suit.

4. The defendants were proceeded against ex-parte before the learned Courts below.

5. The learned trial Court dismissed the suit of the appellants-plaintiffs, vide impugned judgment and decree dated 15.01.2013.

6. Aggrieved with the aforesaid judgment and decree, appellants-plaintiffs preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 29.07.2015. Hence this Regular Second Appeal.

7. I have heard Mr. Hitesh Kaplish, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the appellants contended that the plaintiffs have been allotted less area in the partition. He contended that the Revenue Officer while carrying out the partition was duty bound to consider the title of the parties qua the land in dispute.

He contended that the appellants-plaintiffs were in possession of khasra no. 735/3(4-9). Out of this khasra number, the land measuring 0K-16M has been allotted to defendants no.1 to 6 wrongly and illegally, which vitiate the entire partition proceedings illegal. To support his contentions, he relied upon case **Pritam Singh Vs. Jaskaur Singh 1992(2) PLR 742.**

9. He further contended that the partition proceedings have been carried out at the back of the plaintiffs, in violation of the principles of natural justice. The procedure adopted by the Revenue Authorities was also in violation of the provisions of the Punjab Land Revenue Act, 1887 (for short 'Act'). Thus, he contended that the jurisdiction of the Civil Court is not barred. To support his contentions, he relied upon case **Giani Ram and others Vs. Ompati and others 2008(1)R.C.R (Civil) 619.**

10. I have duly considered the aforesaid contentions.

11. As per Section 158 sub Section 2 (xvii) & (xviii) of the Act, the jurisdiction of the Civil Court is barred with respect to the partition proceedings. To support this view reference can be made to case **Harjinder Singh Vs. Kesar Singh and others 2014(2) PLR 188.**

12. The appellants-plaintiffs have challenged the partition proceedings on the ground that the land measuring 16 Marlas out of khasra no.735/3 have been wrongly allotted to defendants no. 1 to 6 and the partition proceedings were conducted in absence of the appellants-plaintiffs.

13. The learned First Appellate Court has categorically mentioned that the plaintiffs did not appear before the Revenue Authorities, when the partition proceedings were being conducted. The

impugned judgment 29.07.2015 passed by the learned First Appellate Court shows that learned counsel for the appellants in the trial Court has pleaded that appellants were proceeded against ex-parte in the partition proceedings and the partition proceedings were finalized at their back. So, it is an admitted case of the appellants that they were proceeded against ex-parte before the Revenue Officer in the partition proceedings. It is nowhere pleaded that ex-parte proceedings were wrongly ordered against the appellants by Revenue Officer. So, if the appellants have not appeared despite service before the Revenue Officer to join the partition proceedings and were proceeded against ex-parte, they cannot claim that the partition proceedings have been conducted at their back and principles of natural justice have been violated. Rather, the fault lies on their side as they have not appeared before the Revenue Officer and allowed the ex-parte proceedings to be taken up.

14. There is no dispute with the proposition that the revenue officer should take into consideration the title and shares of the parties while ordering the partition. Again, there is no material on record to show that the appellants have raised any question of title before the Revenue Officer during the partition proceedings. They have simply pleaded even in the suit that they were in possession of khasra no. 735/3(4-9). They have nowhere pleaded that they were the exclusive owner of this khasra number. The entire joint property is subject to partition, even though, a co-sharer is in exclusive possession of the specific portion of that property.

15. The allotment of land to the co-sharers/co-owners during the

partition proceedings is the exclusive jurisdiction of the Revenue Officer. The jurisdiction of the civil Court is barred from hearing any such question about the allotment of land as per Section 158 sub Section 2 (xviii) of the Act. So, the appellants cannot assail the partition proceedings before the civil Courts on this ground that the Revenue Officer has wrongly allotted the land measuring 16 Marlas out of khasra no. 735/3 to defendants-respondents no. 1 to 6.

16. The cases relied upon by learned counsel for the appellants are of no help to them. In **Pritam Singh's case (Supra)**, this Court has held that if the Revenue Officer comes to the conclusion that there is no question of title involved, he will proceed with the partition proceedings. As already mentioned in the instant case, no question of title has been raised before the Revenue Officer. So, no fault can be found with the action of the Revenue Officer to proceed further with the partition proceedings. In **Giani Ram and others case (Supra)**, it has been held that 'if the partition proceedings are challenged on the ground that the same were not conducted in accordance with law, the procedure prescribed and in compliance with the principles of natural justice and being without jurisdiction, the civil Court jurisdiction is not debarred'. But, in the instant case, learned counsel for the appellants has not been able to point out as to how the procedure adopted by the Revenue Officer was not in accordance with law and how the principles of natural justice have been violated. So, the concurrent findings arrived at by the learned Courts below requires no interference in the regular second appeal while exercising the limited powers under Section 100 CPC.

17. Thus, no question of law, much less, the substantial question of law as claimed by the appellants arises in the present appeal.

18. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 26, 2016

s.khan

(DARSHAN SINGH)
JUDGE