

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

**RSA No.4377 of 2013 (O&M)
Date of decision:08.08.2016**

Udham Singh and others

... Appellants

Vs.

Naranjan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sarbjit Singh, Advocate
for the appellants.

AMIT RAWAL J.

The present appeal had been filed in August, 2013 and since then, the case has been lingering on in motion hearing. Time and again, adjournments had been sought and at one stage, the case was dismissed for non-prosecution on 16.02.2015, but the appeal was restored, vide order dated 02.03.2015. Thereafter, adjournments had been sought on one ground or the other. On the last date also, the same request was made. Even today also, the request for adjournment has been made, but this Court did not accept the same and proceeded further to decide the case.

The appellant-plaintiffs are aggrieved of the concurrent findings of facts and law in a suit for separate possession by way of partition of plot/property house bearing khewat no.68, khatoni no.87 consisting of khasra no.40//3/1/0k-15 gair mumkin abadi situated in village Gazipur, Tehsil Sultanpur Lodhi, District Kapurthala, vide jamabandi for the year 2002-03 and the consequential relief of permanent injunction seeking restraint order from changing the nature of the suit land on the premise that plaintiffs and defendants are in joint ownership of the property and plaintiffs are owners to the extent of ½ share, i.e., 7 ½ marlas of land

and the defendants are owners with regard to remaining half share. A dispute arose between the parties and they had agreed for mutual partition, but on 10.07.2015, the defendants threatened the plaintiffs not to partition the property and disturb the possession. They also threatened to make further construction. It has been pleaded that Bachan Singh son of Jawala Singh had died and the defendants are his legal heirs.

The suit was contested by the defendants on the premise that property was purchased by father of the defendants - Bachan Singh, measuring 8 marlas from Kirpal Singh, vide sale deed 08.03.1968 and 4 marlas were purchased by them from Inder Singh, vide sale deed dated 11.07.1972 and from Beant Singh also, vide sale deed dated 19.03.1984. After construction, the defendants were residing in the same very house for the last about 20-21 years. The plaintiffs had already relinquished their right in the property of their father in view of writing dated 14.09.1973. The plaintiffs also did not disclose about the earlier suit.

It has been stated that during the life time of Boota Singh, father of the plaintiffs and grand-father of the appellants in the appeal, Hazara Singh-plaintiff was separated and given the amount of loan to his father-Buta Singh and thus, he left with no right in the property. It is further stated that plaintiffs had earlier filed a civil suit no.7 dated 06.01.1979 against Kirpal Singh and others without impleading the defendants as party and got an ex parte judgment and decree dated 19.10.1979. When an application under Order 9 Rule 13 CPC was filed accompanied by relinquishment deed, the plaintiffs compromised the matter with Kirpal Singh and left his claim in the decree by suffering a statement in the Court

on 04.08.1984 and thus, plaintiffs are neither in possession of any property nor can ask for the partition.

In the replication, the plaintiffs denied the aforementioned relinquishment deed/writing and on merits, stated that previous litigation had no concern with the suit property. Hazara Singh was co-sharer in the suit property and after his death, his legal heirs are entitled to share in the suit property on the basis of the Will dated 26.01.2007 executed by Hazara Singh in their favour.

Before the trial Court, the plaintiffs examined PW1-Udham Singh one of the LR of deceased Hazara Singh-plaintiff and also brought on record the jamabandi for the year 2002-03 (Ex.P1), regarding the suit property, Will dated 26.01.2007 marked as P2 and in evidence admitted the sale deed and relinquishment deed marked as Ex.D1 and Ex.D2, respectively, produced on record and also tendered the copies of khasra girdawari and jamabandi. Sukhdev Singh, the other legal heir of deceased plaintiff Hazara Singh was examined as PW2.

On the contrary, defendants brought on record the documentary evidence in support of their defence taken in the written statement. Both the Courts below dismissed the suit. The case set out in the grounds of appeal is that both the Courts below have committed illegality and perversity in the judgments and decrees while dismissing the suit as there is misreading and misconstruction of the writing dated 14.09.1973. The aforementioned writing is between Hazara Singh and Kirpal Singh, wherein, it has been mentioned that Hazara Singh received the share in the property and was left with no concern. The writing also reflected that he was left with no concern

with the property of father-Bootia Singh and not liable for loan taken by Bootia Singh which shall be paid by Kirpal Singh. All these facts reveal that plaintiffs did not have right and interest in the property, therefore, the suit claiming the relief of declaration by way of separate possession could not have been dismissed

For the foregoing reasons, I am of the view that the Courts below being the last Court of fact and law rendered in the findings based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 08, 2016
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