

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5114 of 2013 (O&M)

Date of Decision : 25.05.2016

Ajmer Singh and others

....Appellants

Versus

Avinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jai Kumar Chauhan , Advocate
for the appellants.

Surinder Gupta, J. (Oral)

Heard.

2. Suit filed by plaintiffs seeking partition of land bearing *khasra* nos. 319/102 (7-6) and 72 (2-5) situated in village Kurari Tehsil Kalka, District Panchkula was dismissed by learned Civil Judge (Junior Division), Panchkula with the observation that it is bad for seeking partial partition as the parties own other land within the municipal limits of Kalka, which have not been included in the present suit. Appeal filed by plaintiffs-appellants was also dismissed by learned Ist Appellate Court with the similar observation.

3. Share of parties in the suit land and in the other land jointly owned by them is not disputed.

4. Learned counsel for appellants while relying on the observations of Calcutta High Court in case **Dwijapada Mondal and another vs. Bholanath Mondal and others, 1954 AIR (Calcutta) 85** has argued that in suit land bearing *khasra* nos. 319/102 and 72, co-sharers are not only plaintiffs, legal heirs of Vidya Devi but also the vendees of legal heirs of Vidya Devi, as such, the suit for partial partition is maintainable. In

other land owned by parties, the vendees of defendants are not co-sharer.

5. Hon'ble Calcutta High Court in para 3 of the judgment cited by learned counsel for appellants has observed as follows:-

“3.*The lower appellate Court, however, found as a fact that the so-called properties which have been left out belonged not only to the present parties but also to some other co-sharers of theirs who, how-ever, have admittedly got no interest in the properties under partition. That being the case, it is not at all necessary that the properties which are alleged to have been excluded from the scope of the partition suit should have been brought into the hotchpot. In my judgment, the lower appellate Court is perfectly justified in holding that the suit was not bad on account of a prayer for partial partition.*”

6. In this case, suit land and other land, which as per *jamabandi* for the year 1998-99 (Ex. P-1) is 51 *kanals* 13 *marlas*, was jointly owned by plaintiffs and Vidya Devi. Defendants no. 4 to 9 are the vendees of defendants no. 1 to 3 and have stepped into their shoes. In the event of partial partition being allowed it will create a difficult situation for the co-sharers as the vendees will get ousted from the suit land despite being co-sharers in the entire land owned by Vidya Devi. Suit land was in exclusive possession of Vidya Devi and after her demise, her legal heirs. Share of Vidya Devi is in whole joint land including suit land, as such, suit filed by plaintiffs/appellants seeking partition of land of two *khasra* numbers only is bad for seeking partial partition.

7. In view of above, citation referred by learned counsel for the appellant is not applicable to the facts and circumstances of the case.

8. Learned counsel for the appellant submits that the suit has been dismissed by Court below with the observation that it is not maintainable for partial partition, as such, appellants may be allowed liberty to seek remedy available to them under the law.

9. As both the Courts below have observed that suit is bad for seeking partial partition, which virtually means that it is not maintainable, the observations made by Courts below will not debar the appellants from seeking appropriate remedy available to them under the law.

10. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

May 25, 2016
jk

(SURINDER GUPTA)
JUDGE