

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.82 of 2013(O&M)
DATE OF DECISION: October 6,2016

Surinder Singh

...Appellant

versus

Gian Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Jasbir Rattan, Advocate for the appellant.
Mr.Sudhir Paruthi, Advocate for respondent No.1.
Mr.IPS Doabia, Advocate for respondent No.7.

AMIT RAWAL, J.

Defendant No.8 is appellant before this Court. He is aggrieved of the concurrent findings recorded by the Courts below whereby the suit for declaration, separate possession by way of partition, consequentially for mandatory and permanent injunction seeking 1/3rd share out of 12 marlas of land has been decreed.

The short question involves is that the suit was not maintainable in view of doctrine of partial partition. As per jamabandi Ex.P2, the joint khata is 8 kanals 5 marlas. There are fifteen co-sharers, whereas, the plaintiff sought partial partition of 12 marlas of the land upon which he constructed his

house to the extent of 20' x 12'. He submits that in the absence of other co-sharers, the suit was not maintainable. This factor has been ignored by the Courts below.

As per para 6 of the plaint, the plaintiff has categorically admitted that the partition amongst the other co-sharers had already been effected and only the disputed property remained was 12 marlas. In this background, the present suit is filed.

I have heard the learned counsel for the parties and perused the record.

Jamabandi, Ex.P2, shows the joint khata having 15 co-sharers, whereas, the suit has been filed in respect of only 12 marlas of the land. Para No.6 of the plaint reads as under:

"That the other co-sharers of khasra No.85 are in possession of their respective shares as per settlement arrived at between the co-sharers. Man Singh was having possession over a specific portion of 12 marlas of land out of khasra No.85 as per his share."

Jamabandi Ex.P2, shows the joint khata is 8 kanals 5 marlas of fifteen co-sharers, whereas, the plaintiff sought partial partition of 12 marlas of the land and the other co-sharers have not been impleaded, therefore, the suit is not maintainable in view of the law laid down in Kenchegowda (since deceased) by

legal representatives v. Siddegowda alias Motegowda (1994) 4
Supreme Court Cases 294 and Nihalu and another v. Chandar
and others AIR 1959 Punjab 115.

Accordingly, the present appeal is allowed. The judgments and decrees of the Courts below are set aside and the suit of the plaintiff is dismissed.

October 06, 2016
KD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No