

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

1. **RSA No.4856 of 2016 (O&M)**
Date of Decision: 23.11.2016

Jeeto Devi and others **.....Appellants**
Vs
Sohan Lal and others **....Respondents**

2. **RSA No.5956 of 2016 (O&M)**

Devi Raj and others **.....Appellants**
Vs
Sohan Lal and others **.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Munish Mittal, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Vide this common order RSA Nos.4856 and 5956 of 2016 are being decided as common facts are involved in both the appeals. For brevity, facts are being culled out from RSA No.4856 of 2016.

[2]. Plaintiffs are in Regular Second Appeal in a suit for possession, partition and permanent injunction.

[3]. Brief facts are that the plaintiffs claimed that the suit property was in *abadi* and was earlier owned and possessed by Basso Ram and Hari Chand in equal shares. After the death of

Hari Chand, plaintiffs became owner in possession of the property to the extent of half share. The suit property was not partitioned by metes and bounds and was a joint land between the parties. Since the plaintiffs were not getting any benefit out of the joint land, therefore, they wanted to get the same partitioned. Basso Ram had sold some share in favour of defendant Nos.12 to 22 vide sale deeds. Plaintiffs further claimed that even if, Basso Ram had sold more than his share, the sale deed to that extent was wrong and illegal and the same was not binding upon the rights of the plaintiffs. Plaintiffs prayed for partition of the suit property and possession to the extent of half share.

[4]. Defendant Nos.1 to 11 contested the suit and claimed that the land was actually sold by father of the plaintiffs. Because father of defendants was of feeble mind and, therefore, the affairs of the property were managed by father of the plaintiffs. The suit property was actually sold by Hari Chand, father of the plaintiffs where he was co-owner along with father of the defendants in the land comprised in *Khasra* Nos.610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 695, 696, 697, 698, 699, 985, and 986. Only *Khasra* Nos.610 was partitioned as per order of the competent Court. Rest of the property was joint. Defendants alleged that the plaintiffs

committed fraudulent act by making a release deed in respect of land comprised in *Khasra* No.695 and 696. The land was sold by father of the plaintiffs and they were aware of it. Plaintiffs utilized the amount received from the sale of property comprised in *Khasra* No.611 and 612 etc. It was contended by the defendants that Basso Ram never sold any land to anyone. It was only Hari Chand, who sold the property as he was managing the affairs of the joint property. Defendant Nos.1 to 11 had no knowledge of any transaction because Basso Ram was only a tool in the hands of Hari Chand and all the transactions were done by Hari Chand alone. Defendant Nos.2 to 22 were related to the plaintiffs as they were being helped by the plaintiffs in raising construction over the land sold by Hari Chand.

[5]. Defendant No.12 also filed written statement to the effect that Basso Ram was the owner of the property. Factum of partition was admitted. Previously defendant No.12 was in possession as lessee in respect of land measuring 4 *Bighas* 2 *Biswas* comprised in *Khasra* No.611(2-6) and 612 (1-17) out of which defendant No.12 purchased land measuring 1 *Bigha* 7 *Biswas* vide sale deed dated 09.07.1984 from Basso Ram for consideration. Mutation No.1987 was sanctioned in his favour. Out of land purchased by defendant No.12, he sold some land

to others and presently he was in possession of land measuring 908 sq. yards along with Secret Heart Convent School. Other persons, who had purchased some part of the land from him, had already constructed their houses on the property. In this way the property was claimed to be not joint as the same was already partitioned by metes bounds.

[6]. It was denied that Basso Ram sold more than his share. At the time of purchase of land, defendant No.12 verified the facts from revenue record and purchased the same. Defendant No.12 was further fully competent to alienate the property owned and possessed by him. Similarly, defendant No.20 also filed written statement and he claimed that he had purchased one plot measuring 31' x 66' with specific dimensions in *Khasra* No.611 and 612 from previous owner Pardeep Kumar vide sale deed dated 18.12.1996 for consideration. He had also raised construction of residential house in the year 1997-98 after getting the site plan sanctioned from Municipal Council, Jagadhri and he paid house tax as well. Similarly, defendant No.21 also filed separate written statement to the effect that he had purchased one plot measuring 64' x 54'-6" being part of *Khasra* No.612 from its previous owner vide sale deed dated 06.04.2000 for lawful consideration and had also constructed his residential house after getting the site plan sanctioned from

Municipal Committee, Jagadhri. He was also paying house tax. Mutation No.2318 was also sanctioned in his favour.

[7]. Defendant No.22 also filed written statement to the effect that she had purchased plot measuring 227 Sq. Yards (5 *Biswas*) i.e. 10/166 share, out of share of his vendor Pardeep Kumar, who had already purchased the same from Basso Ram (previous owner). She had also verified title of her vendor from the revenue record. She had purchased abovesaid land vide registered sale deed dated 03.07.1995 for lawful consideration and claimed herself to be *bona fide* purchaser.

[8]. After filing replication, both the parties went to trial on the following issues:-

- “1. Whether plaintiffs are entitled to the relief of ½ share of the suit property by metes and bounds? *OPP*
2. Whether plaintiffs are entitled to the relief of permanent injunction, as prayed for? *OPP*
3. Whether suit of plaintiffs is not maintainable of the present form? *OPD*
4. Whether plaintiffs have got no locus standi to file the present suit? *OPD*
5. Whether plaintiffs are legally estopped from filing the present suit? *OPD*
6. *Relief.”*

[9]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[10]. After appraisal of the evidence, trial Court dismissed the suit vide judgment and decree dated 14.01.2013 and the same was upheld by the Additional District Judge, Jagadhri vide judgment and decree dated 14.03.2016. That is how the present appeal came to be filed before this Court.

[11]. I have heard the submissions made by learned counsel for the appellants.

[12]. Learned counsel for the appellants sought to argue on the following substantial questions of law as framed by him in para 8 of the grounds of appeal:-

- “i) Whether the impugned judgment has been passed without appreciation of evidence and law?*
- ii) Whether the appellants are entitled to ½ share of the total land as per their entitlement?*
- iii) Whether the joint land of the appellants should be partitioned, when the respondents admitted regarding ½ share of the appellants in the joint land?*
- iv) Whether the grave manifest injustice has been caused to the appellants?”*

[13]. Perusal of the aforesaid questions of law shows that none of the questions can be considered to be questions of law,

much less substantial questions of law as all the questions framed by the appellant are pure question of facts based on evidence on record. Therefore, in order to consider any question arising after reading and appreciation of evidence, this Court proceeded to consider the case on factual merits.

[14]. Admittedly, plaintiffs were legal heirs of Hari Chand. Defendant Nos.1 to 11 were legal heirs of Basso Ram. Hari Chand and Basso Ram were real brothers. Plaintiffs were entitled to half share of their father Hari Chand and remaining share of Basso Ram was belonging to defendant Nos.1 to 11. The question arose whether plaintiffs were entitled to partition of the land measuring 4 *Biswas* 3 *Bighas* comprised in *Khasra* Nos.611 and 612. PW-1 Dev Raj son of Hari Chand admitted in his cross-examination that they had 46 *Bighas* of land, which was joint and comprised in *Khasra* Nos.611 to 621, 985 and 986. The witness also stated that *Khasra* Nos.610, 611 and 612 were lying vacant and on the remaining land, there was *abadi*. The witness further stated that out of joint land, some *khasra* numbers were sold by his father and some *khasra* numbers were sold by Basso Ram i.e. father of defendant Nos.1 to 11. Hari Chand sold *Khasra* Nos.613, 614, 615, and 616, whereas remaining *Khasra* numbers were sold by Basso Ram.

[15]. The witness further stated that the land was also

partitioned mutually. *Khasra* No.610 came to the share of his father and *Khasra* No.611 and 612 were with the Basso Ram and the remaining land was joint to the extent of half share each. The witness further admitted that both the brothers agreed to sell whole *khasra* numbers which were owned by them in equal shares. Out of total land measuring 46 *Bighas*, they were in possession of half share and the remaining land was in possession of Basso Ram. Their possession existed for the last more than 50 years and the remaining land was joint land which was not partitioned.

[16]. The cross-examination of PW-1 revealed that there was a mutual settlement between Hari Chand and Basso Ram. In pursuance of said mutual settlement, Hari Chand sold *Khasra* No.613 to 616 and Basso Ram sold *Khasra* Nos.611 and 612. The remaining land remained in joint ownership of the Hari Chand and Basso Ram in equal shares. Judgment dated 11.11.2002 passed in civil suit No.593 of 1998 Ex.P-3 proved that Dev Raj and others sons of Hari Chand filed a suit for declaration against Basso Ram etc., claiming compensation in respect of *Khasra* No.610/1. In the said suit it was admitted by the plaintiffs that there was a mutual partition effected between the parties to the effect that *Khasra* No.610 (4-3) came to the share of Hari Chand and *Khasra* No.611 (2-6) and 612 (1-17)

came to the share of Basso Ram. Though the aforesaid suit was dismissed and the claim of Dev Raj and others was not accepted, but they cannot wriggle out of the admission to the effect that *Khasra* Nos.611 and 612 came to the share of Basso Ram, which were sold by them exclusively in the year 1984. In this way, the entire controversy was based on factual matrix on record.

[17]. No substantial question of law is involved in the present appeals for consideration of this Court. Since the entire controversy is revolving around the factum of appreciation of evidence, therefore, in considered opinion of this Court, both the Courts below have rightly appreciated the facts and material on record. There cannot be any re-appreciation of evidence in Regular Second Appeal. Consequently, no question of law worth cognizance of this Court is involved in both the appeals and the same are accordingly dismissed.

[18]. Since the main appeals have been dismissed on merits, therefore, the applications for condonation of delay in re-filing the appeals i.e. CM Nos.12606-C of 2016 in RSA No.4856 of 2016 and CM No.15666-C of 2016 in RSA No.5956 of 2016 have become totally inconsequential and the same are disposed of in the light of decision in the main appeals.

[19]. In RSA No.4856 of 2016, by way of application under

Order 41 Rule 27 CPC i.e. CM No.14607-C of 2016, details of land measuring 38 *Bighas* 4 *Biswas* are sought to be placed on record. Since the controversy is factual and has been appreciated by the Courts below with reference to the evidence on record, therefore, even if the aforesaid details of land are allowed to be placed on record, the same will not change the outcome of the appeals. Having considered the facts, this Court does not find any justification to consider the details of land which are not found sufficient to be interfered in the Regular Second Appeal. The details of land in question cannot be read over and above the evidence in the context of *Khasra* No.611 and 612 which ultimately came to the share of Basso Ram and *Khasra* Nos.610, 613 to 616 came to the share of Hari Chand. The factual details were duly supplemented by the revenue record, therefore, the proposed additional evidence is not justified to be placed on record as the same will not tilt the ultimate decision of the appeal. This application is accordingly dismissed.

November 23, 2016

*Atik***(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No