

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1543 of 2014 (O&M)
Date of Decision : 23.02.2016

Baljinder Singh

....Appellant

Versus

Baldev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Deepak Sharma, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by Baljinder Singh (defendant no. 1) in civil suit filed by plaintiff-Baldev Singh (now respondent no. 1), seeking separate possession of 13 *marlas* by way of partition of land comprised in *khewat/khatauni* no. 588/655 *khasra* no. 593 (1-0), 594 (0-11) situated in the revenue estate of village Sohana, *tehsil* Mohali, District Ropar.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Plaintiff alleged that suit property is joint holding of parties in which he has share to the extent of 13 *marlas*. Earlier defendant no. 1 filed suit seeking the relief of permanent injunction against plaintiff, which was decreed and it was observed by the Court that property can be partitioned by metes and bounds. These findings were affirmed by learned Ist Appellate Court. The defendants now want to raise construction over valuable portion of suit property in order to establish their exclusive possession over that portion. In the event of their succeeding to so, plaintiff will suffer irreparable loss, hence this

suit seeking partition of share of plaintiff by metes and bounds.

4. Defendant no. 1 contested the claim of plaintiff with the plea that after death of defendant no. 2-Sajjan Singh, his share was succeeded by defendant no. 4-Pritpal Kaur, who sold this share to Jarnail Singh and Jarnail Singh sold the land purchased from Pritpal Kaur to plaintiff-Baldev Singh. Ajit Kaur suffered decree in favour of defendant no. 1-appellant. It was averred that plaintiff is not having 13 *marlas* of land as his share rather his actual share is less than 6 *marlas* out of which 2 *marlas* of land was taken by Kartar Singh son of Raju Singh in exchange thereby reducing share of plaintiff as less than 4 *marlas*. It was averred that suit land had already been partitioned between the parties. Plaintiff took his share towards western side of *bara* shown as ABCD in the site plan while portion shown as DEFG came to the share of defendant no. 1. This partition took place when the land was sold by Pritpal Kaur to Jarnail Singh. Actual partition and possession as per rough site plan (Ex. D-1) was effective for the last more than 45 years.

5. On appraisal of evidence, learned Civil Judge (Junior Division) SAS Nagar, Mohali recorded the finding that on the basis of entries in *jamabandi*, plaintiff and defendant no. 1 are proved to be co-sharers of suit land and defendant no. 1 had failed to prove that it stood partitioned at any point of time. Even DW-1 Manjit Kaur mother of defendant no. 1 had admitted in cross-examination that no partition of suit land had ever taken place. The objection raised by defendant no. 1 about the jurisdiction of Court to partition suit land, was discarded as suit

land comprised of *bara* and house. With the above observations suit of plaintiff was decreed. Not satisfied, defendant no. 1 filed appeal, wherein judgment of lower Court was modified to the extent that plaintiff was held entitled to separate possession of suit land to the extent of 27/72 share by way of partition. Defendants no. 1 and 3 were restrained from raising any construction over suit land and from taking exclusive possession of any valuable portion thereof illegally or forcibly.

6. I have heard learned counsel for the appellant, perused the judgments of both the Courts below and the paper-book with his assistance.

7. Learned counsel for the appellant has argued that plea of defendant no. 1 was that suit land had already been partitioned.

8. It is apparent from perusal of judgment of Ist Appellate Court that in the earlier suit for injunction filed by defendant no. 1 it was observed that no partition of suit land had ever taken place and plaintiff was held entitled to seek separate possession of his share in suit land by way of partition.

9. Learned counsel for the appellant has raised argument that civil court has no jurisdiction to partition the land having *khasra* number but this argument has been rightly discarded by the Court below keeping in view the fact that there is construction of house over suit land and portion of it is being used as *bara* thereby investing the civil court with jurisdiction to order partition of suit land.

10. Learned counsel for the appellant during lengthy

argument could not point out that the observations of Court below that suit land is joint and plaintiff being co-sharer is entitled to seek his separate possession are based on misreading of evidence on record.

11. On perusal of judgment of Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

February 23, 2016
jk

(SURINDER GUPTA)
JUDGE