

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

(1) RSA-955 of 2016 (O&M)
Date of decision: 03.06.2016

Gurcharan Singh
...Appellant

Versus

Karnail Singh and others
...Respondents

(2) RSA-956 of 2016 (O&M)
Date of decision: 03.06.2016

Gurcharan Singh
...Appellant

Versus

Gurbachan Singh and others
...Respondents

(3) RSA-957 of 2016 (O&M)
Date of decision: 03.06.2016

Gurcharan Singh
...Appellant

Versus

Gurbachan Singh and others
...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Tribhawan Singla, Advocate for the appellant.

Jitendra Chauhan, J. (Oral)

The above noted appeals are being disposed of by this single judgment, having arisen out of common judgment. However, the facts are being derived from RSA No. 955 of 2016.

2. The suit filed by plaintiff/appellant Gurcharan Singh bearing No. 349 of 18.08.2006 titled as Gurcharan Singh Vs. Karnail Singh and others was dismissed whereas the consolidated suit titled as Gurbachan Singh and another Vs. Gurcharan Singh and others bearing Suit no.131 of 09.09.2008 was decreed to the effect that Gurbachan Singh and Sukhdev Singh on one hand and defendant no.2 and 3, namely, Karnail Singh and Jaspal Singh on the other hand were held to be owners to the extent of half share each in land measuring 68 kanals 3 marlas comprising of khewat nos. 950 and 848, khatauni nos.1368, 1369, 1370, 1243, 1244 bearing khasra nos. 60//3/2/6-3, 344/1/0-9, 60//11/6-5, 12/8-0, 19/8-0, 23/1/2-11, 60//2/1-19, 8/2/2/6-13, 9/8-12, 13/7-11, 17/4-0, 18/8-0, 60//22/1/3-17, 60//20/6-5 and mortgage deed executed by defendant no.1 in favour of State Bank of Patiala had no effect on the title of Gurbachan Singh and Sukhdev Singh plaintiffs and Karnail Singh and Jaspal Singh defendant nos.2 and 3 and further defendant no.1 Gurcharan Singh was restrained from

mortgaging, selling or disposing of the property in any manner.

3. The counter claim of defendant no.1 Gurcharan Singh in Civil Suit bearing no.131 of 09.09.2008 was partly decreed to the extent that he was owner in possession to the extent of 1/15th share in the land measuring 77-18-10 as detailed in the head note of the counter claim of the land situated at village Andheri.

4. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 26.10.2015.

5. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, except for partly allowing the counter claim qua 1/3rd share in favour of Gurcharan Singh in 68 kanals 3 marlas of land in village Sangrur-A, hence, the instant appeal has been filed by plaintiff Gurcharan Singh.

6. It is contended that both the Courts below have gravely erred in dismissing the suit of the appellant by ignoring the fact that the alleged family partition writing dated 22.06.1977 was neither stamped nor registered nor the khasra number was mentioned in the alleged writing. Even, as per latest jamabandi, there is no reference in the revenue record regarding the said

family partition. The property is shown to be joint between the parties. However, the learned Courts below have ignored the above facts of the case. It is further contended that the suit property is situated in village Andheri, where there are number of other co-shares and no partition can be affected without their signatures on the partition deed which is clear from the revenue record. There was no earlier suit decided between the parties except an injunction application which was decided in the earlier suit in which the appellant had specifically stated that he was owner in possession of the property at Andheri to the extent of 1/15 share. The respondents had sold the land situated in village Andheri, vide sale deed No.1515 dated 14.07.2000 and sale deed No.2481 dated 03.11.2003, therefore, once they are themselves claiming that the land has already been partitioned, then they have no right to sell the property at village Andheri.

7. Heard, the learned counsel for the appellant and perused the record carefully.

8. In the present case, the dispute is qua 1/3rd share in joint land measuring 69 kanals 03 marlas, situated in village Sangrur-A. The argument raised by learned counsel that the family partition dated 22.06.1977 was neither stamped nor registered, lacks merit as the same has been duly proved on record by the respondent. The

Sarpanch, Dewan Singh who was examined as DW-1 had duly testified the family partition writing on record as Ex.D1/A. The appellant has not denied the family partition in his statement made before the Court in suit filed by a co-sharer Bant Singh qua the land in village Andheri. The appellant in that suit had specifically stated that he had been lifting soil from his land which came to him in family settlement. A bare perusal of the record further reveals that earlier also, the appellant had filed a suit for permanent injunction against the respondents to restrain them from raising construction on specific khasra number. The injunction application was dismissed by the competent Court on the ground that the appellant had not disclosed regarding the family partition writing dated 22.06.1977. Thereafter, the said suit was dismissed in default on account of non appearance of the appellant before the Court. Again the appellant had filed another suit No.349, after six months seeking 1/3rd share in suit property and in that suit also, he has not sought partition of the said land. There is nothing on record to prove that the appellant had ever used the land of village Andheri. On the one hand, the appellant had admitted the family partition in earlier suit filed by Bant Singh and on the other hand, he denied the same. The appellant had taken inconsistent stand at different point of time. The property in village Andheri was inherited by

Teja Singh, Gurdial Singh and Chhota Singh from their father Waryam Singh and there was no co-sharer therein, therefore, the argument of learned counsel that there were other co-sharer in village Andheri and no partition can be effected without their signatures, is devoid of merit. Otherwise also, the family settlement arrived at between the family members who have their respective share in the suit land and there was no need to include all the co-sharer of village Andheri. There is nothing on record to prove claim raised by the appellant.

9. On consideration of all the facts and material on record, this Court finds no scope to interfere with the well reasoned judgments of the Courts below. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeals. Hence, no interference is called for. Accordingly, the appeals are dismissed.

03.06.2016

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(JITENDRA CHAUHAN)
JUDGE