

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

RSA No.4991 of 2014 (O&M)

Date of Decision: 02.08.2016

**Manjit Singh and others
Vs**

.....Appellants

Karnail Singh and others

.....Respondents

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

Present: Mr. Hemender Goswami, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

CM No.13490-C of 2015

Prayer in this application is for bringing on record legal representatives of deceased appellant Charan Kaur who died on 01.11.2013 leaving behind legal representatives as shown in para No.2 of the application.

For the reasons mentioned in the application, the same is allowed and legal representatives as shown in para No.2 of the application are ordered to be brought on record subject to all just exceptions.

Amended memo of parties is taken on record.

RSA No.4991 of 2014

[1]. Civil Suit No.412 of 2004 titled as Resham Singh and others Vs. Charan Kaur and others was filed for possession of land measuring 27 Kanals 5 marlas out of total land measuring

31 kanals 18 marlas as shown by the khasra numbers in which plaintiffs claimed themselves to be owners to the tune of 27 kanals 5 marlas. Charan Kaur was owner to the tune of 1 kanal 19 marlas and defendants No.1 to 7 were owners to the tune of 2 kanals 5 marlas and defendants No.8 to 10 were owners of 8 marlas of land. Plaintiffs claimed that suit land measuring 31 kanals 12 marlas was situated in village Ghuduwal and the property was joint property of the parties. The allegations of encroachment by the defendants were made and therefore, partition was sought.

[2]. The claim of the plaintiffs was refuted by defendants No.1 to 4 on number of grounds. It was claimed that land measuring 12 marlas in khasra No.79 was situated at distant place from the remaining land and the Civil Court had no jurisdiction to try the suit. The plaintiffs did not disclose about the construction done by the defendants and land was already partitioned. The jointness of the property was also denied. Defendants claimed that except khasra No.79, all other land were partitioned and different co-sharers came in possession of their respective shares after partition. Defendants also claimed that partition was reflected in the revenue record as well. Khasra No.79 (0-12) was within Phirni and house was constructed thereupon. This khasra number was not partitioned.

[3]. In the second suit titled as Manjit Singh and others Vs. Resham Singh and others i.e. Civil suit No.40 of 1999, partition of house measuring 12 marlas comprised in khasra No.79 (0-12) was sought. It was claimed that land measuring 12 marlas in khasra No.79 was joint of the parties. Formerly Boota Singh, father of the plaintiff and defendants were co-sharers in the suit property. The house was in existence. Boota Singh died and plaintiffs were Class-I heirs of Boota Singh and accordingly they stepped into his shoes. Due to jointness of the property, plaintiffs could not derive full benefit of it and therefore, they prayed for partition of khasra No.79 between the parties.

[4]. This suit was contested by the defendants on number of grounds. Defendants alleged that they had spent huge amount on construction of the residential house and the suit was bad for partial partition. The existence of suit property in village Ghuduwal was admitted. It was submitted by the defendants that they had constructed the residential house over the suit property in the year 1964 and thereafter, they were in exclusive possession of the same. The partial partition was alleged as it was only with regard to khasra No.79 whereas many other khasra numbers were left which were joint of the parties.

[5]. Civil Suit No.412 of 2004 titled as Resham Singh and

others Vs. Charan Kaur and others was clubbed with Civil Suit No.40 of 1999 titled as Manjit Singh and others Vs. Resham Singh and others by the trial Court vide order dated 16.11.2005.

[6]. After completion of pleadings, both the parties went to trial on the following issues:-

“1. Whether plaintiffs are entitled for possession of the property in dispute by way of partition? OPP

2. Whether partition qua the agriculture land have already been effected between the parties? OPD

3. Whether this court has got no jurisdiction to try and entertained the present suit? OPD

4. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD

5. Whether plaintiff has not approached this Court with clean hands? OPD

6. Relief.”

[7]. Parties led their respective evidence to prove their case. Trial Court held that suit land was joint between the parties. Defendants could not prove nature of the suit property. At one point of time in cross examination, defendant had pointed out that the suit land was already partitioned whereas at another place defendant admitted that it was not partitioned. On third occasion, defendant pointed out that the suit land was partitioned by written agreement between the parties in the

Panchayat of the village, but he could not produce said writing. No oral or written partition could be proved on record in the evidence of the defendants. Revenue record viz. *Jamabandi* and *khasra girdawari* proved that specific khasra numbers were in possession of particular individual. The possession of specific khasra numbers in a joint property would amount to possession of share only. No order of partition could be brought on record by the defendants, rather defendant in the cross examination deposed vague and uncertain terms in respect of ownership in the suit property. No sale deed was produced to prove the ownership of the defendant and in the context of his co-sharership to the extent of 29 kanals. In cross examination, defendant admitted that his predecessor and mother had purchased 1 kanal 19 marlas out of the suit land, but no evidence to that effect was brought on record, nor his alleged entitlement to the extent of 29 kanals allegedly purchased by him could be produced on record.

[8]. Trial Court by overall assessment of evidence held that the suit land was joint between the parties and was not partitioned by any mode of partition. Both the suits were decreed and preliminary decrees were prepared. The suit land was ordered to be partitioned as per shares of the parties. *Jamabandi* Ex.P4 was ordered to remain part of the judgment.

[9]. Two appeals were filed before the lower Appellate Court. Both the appeals were dismissed by the lower Appellate Court vide judgment and decree dated 09.04.2014. That is, how, the present appeal came to be filed in this Court.

[10]. I have heard learned counsel for the appellants and also perused the record.

[11]. During the course of arguments, it was argued that mere construction of 1 marla or 2 marla in the suit land out of 31 kanals will not make the land as *Gair Mumkin* land whereas revenue record proved the land to be agricultural land. It was also projected that except khasra No.79 which was shown to be *gair mumkin abadi*, rest of the khasra numbers were shown to be agricultural in nature and therefore, Civil Court has got no jurisdiction to partition the same. As per photocopies of documents Ex.PX, PY and PZ, the houses were constructed on the suit property. The factum of construction was admitted by defendant in his cross examination to the extent that six houses were constructed in the suit property by different co-sharers having separate passages leading to their houses. He also referred to the previous litigation in which entire suit land was claimed by the defendants to be in their exclusive possession on the basis of mortgage, but the said suit was withdrawn. The application in which khasra Nos.34//21, 22, 23 and 25 were

claimed to be houses by the defendants was also not pressed. The entire thrust of the arguments is that the revenue authorities had no jurisdiction to order partition of the houses and the shop constructed over the land.

[12]. It is a settled principle that if house is constructed on the land, land seems to be a land cover under Land Revenue Act and Revenue Officer has no power to partition such land. If some portion of the land is constructed by the co-sharers then the Revenue Court has got no jurisdiction to partition such land and it is only a Civil court which will have jurisdiction to partition the same. Revenue Authorities will have jurisdiction to partition the suit land if substantial portion of it is being put for agriculture use.

[13]. The *jamabandi* Exs.P1, P2 and P4 would reveal that plaintiffs and defendants are co-shares in the suit property and the same has not been partitioned. The evidence on record would reveal that the parties were co-sharers and the trial Court had rightly framed preliminary decree and the lower Appellate Court had rightly affirmed the same.

[14]. In view of aforesaid, no fault can be found with the judgments and decrees passed by the Courts below. No law point worth consideration is involved in the appeal. The law points as framed in the grounds of appeal are pure questions of

facts except point No.d which does not arise for consideration in the present appeal inasmuch as that the Civil Court has got jurisdiction to partition the suit land where construction has come up in view of evidence on record.

[15]. In view of concurrent findings recorded by the Courts below, this Court is of the considered view that the findings of facts recorded by the Courts below are neither perverse, nor are the result of misreading of evidence. Resultantly, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

02.08.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No