

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

**R.S.A No.816 of 2014(O&M)
Date of decision :24.10.2016**

Baldev Singh

..... Appellant

Versus

Om Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Arvind Singh, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 1835-C of 2014

This application has been filed under Section 5 of the Limitation Act for condoning the delay of 7 days in filing the present appeal.

Heard.

In view of the reasons mentioned in the application, the present application stands allowed and the delay of 7 days in filing the present appeal is hereby condoned.

R.S.A No. 816 of 2014 (O&M)

The present appeal has been preferred against the judgment and decree dated 07.08.2013 passed by the learned District Judge, Jind,

whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 10.02.2012 passed by the learned Additional Civil Judge (Sr. Division), Safidon, has been dismissed.

2. Appellant-plaintiff has filed the suit for declaration to the effect that he is joint owner in possession to the extent of 1/ 5th share in the land measuring 171 kanal 19 marlas detailed and described in the head note of the plaint situated within the revenue estate of village Karkhana, Tehsil Safidon, District Jind and is entitled to its partition through the revenue officers and mutation of partition bearing no. 800 of 22.09.2001 is null and void and not binding on the rights of the plaintiff. He has also sought a decree for permanent injunction restraining the defendants from alienating any specific part of the suit land.

3. As per averments in the plaint, Rattan Singh, the father of appellant-plaintiff along with his brothers Deep Chand, Sadhu Ram, Kanha Ram i.e. defendants no. 6 to 8 and heirs of his brother Karam Singh namely Om Parkash, Maha Singh (sons), Smt. Rajpati, Smt Chandro and Roshi (daughters) i.e. defendants no. 1 to 5 were in joint possession of the suit land. Plaintiff and his wife are in service and residing at Kurukshetra. His father Rattan Singh died on 03.05.2001 at Kurukshetra. He executed registered Will dated 02.01.1997 in his favour. On the basis of which the mutation of inheritance no. 799 dated 22.09.2001 was sanctioned in his favour and he has become the joint owner in possession to the extent of 1/ 5th share in the suit land along with defendants. Rattan Singh, the father of appellant-plaintiff was in his old age and was suffering from cancer of lungs. Plaintiff visited the Halqa

Patwari on 14.03.2010 for obtaining the copies of the revenue record. Then, he came to know that the whole khewat has been partitioned vide mutation no. 800 of 22.09.2001 and he was shown to be the owner of separate land measuring 32 kanal 17 marlas detailed and described in the plaint situated at village Karkhana, Tehsil Safidon, District Jind and the land measuring 7 kanal 15 marlas was kept joint for passage, watercourse and plots etc. He further pleaded that he has never consented for any partition. The mutation of partition no. 800 dated 22.09.2001 and consequent revenue entries in the jamabandies for the year 2003-04, 2008-09 are null, void and are not binding on the rights of the plaintiff. Hence, this suit.

4. Respondents-defendants no. 1 to 6 and 8 filed the joint written statement pleading therein that the partition has taken place and mutation no. 800 was sanctioned. Now, they have come to know that said mutation no. 800 of partition is disturbing the actual and physical possession of the parties. They have no objection if the partition is effected as per the actual possession of the parties and mutation no. 800 is set aside. However, with these pleas, they pleaded for dismissal of the suit.

5. Respondent-defendant no. 7 contested the suit on the grounds *inter alia* that joint land of the parties has been partitioned with consent of all the co-owners/ co-sharers in the joint land. They had filed the joint affidavit before the revenue authority and had got the land partitioned mutually. Mutation no. 800 dated 22.09.2001 has been rightly sanctioned. The suit land has been partitioned mutually with the consent

of all the co-sharers. With these pleas, they pleaded for dismissal of the suit.

6. From the pleading of the parties, the following issues were framed by the learned trial Court vide order dated 09.05.2007:-

1. Whether the plaintiff is joint owner in possession to the extent of 1/5 share in the suit land measuring 171 kanals 19 marlas? OPP
2. Whether the mutation of partition bearing no. 800 of 22.09.2001 is null and void and are liable to be set-aside.?OPD
3. Whether suit of the plaintiff is not maintainable in the present form?OPD
4. Relief.

7. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 10.02.2012.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned District Judge, Jind, vide impugned judgment and decree dated 07.08.2013. Hence this Regular Second Appeal.

9. I have heard Mr. Arvind Singh, Advocate, learned counsel for the appellant and have carefully gone through the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that the alleged affidavit of Rattan Singh, the father of plaintiff is not an exhibited document and is only a marked document, which cannot be taken into consideration. He further contended that in fact appellant-plaintiff had never consented for the partition of the joint land. The mutation of inheritance in favour of the plaintiff due to death of his father-Rattan Singh bearing no. 799 and then mutation of partition no.

800 were sanctioned on the same date i.e. 22.09.2001. He contended that the signatures of the plaintiff have been obtained at the foot of Rapat Rojnamchas Ex.P9 and Ex.P9/A at the time of sanctioning of the mutation of inheritance. No procedure as prescribed in the Punjab Land Revenue Act, 1887 (for short "Act") has been followed by the concerned revenue officer. He further contended that the partition is also highly inequitable as the land of the plaintiff has been fragmented into different portions/Chak's. Thus, he contended that the mutation of partition no. 800 dated 22.09.2001 (copy Ex.P-14) is null and void and is not binding on the rights of the plaintiff.

11. I have duly considered the aforesaid contentions.

12. Appellant-plaintiff has challenged the mutation of partition no. 800 dated 22.09.2001 primarily on the grounds that reference of the affidavit given in the Rapat Rojnamcha no. 19 dated 15.09.2001 is a forged document. On the asking of Om Parkash and Maha Singh defendants, he had come for getting the mutation of inheritance sanctioned in his favour on the basis of Will dated 02.01.1997 executed by his deceased father-Rattan Singh in his favour and at that time his signatures were obtained on the Rapat Rojnamcha. All the recorded co-shares were not present at the time of the alleged Rapat Rojnamcha. The mutation was not sanctioned on 15.09.2001, the date on which the Rapat Rojnamcha was entered. The same has been sanctioned on 22.09.2001. It is further the case of the appellant-plaintiff that he has never consented for the partition of the suit land. He has also pleaded failure of knowledge of any such partition. But, on appraisal of the evidence on record, the

aforesaid pleas raised by the appellant-plaintiff are not substantiated. Section 123 of the Act deals with the affirmation of the partition privately effected by the parties. This provision of law provides that where a partition has been made without intervention of Revenue-officer, the party thereto may apply to the Revenue-officer for an order affirming the partition. Thereafter, the Revenue-officer shall inquire into the case and if he found that partition has in fact been made, he may make an order affirming it and take the further steps under Sections 119 to 122 of the Act.

13. Mark 'DA' is the joint affidavit of Rattan Singh, the father of appellant-plaintiff and other co-sharers namely Sadhu Ram, Deep Chand, Maha Sigh, Om Parkash etc. The same has been attested by the Executive Magistrate, Safidon. No doubt, this is a marked document and has not been proved in accordance with law. But, this affidavit is ratified by the subsequent Rapat Rojnamcha dated 15.09.2001 (Copy Ex.P-9 and Ex.P-9/A), which shows that the present plaintiff along with Om Parkash, Maha Singh, Deep Chand, Sadhu Ram, Kanha Ram co-sharers accompanied by Hawa Singh Lambardar had come present and made the statement with respect to the mutual partition of their land. The said Rapat Rojnamcha is signed in English by the present appellant. Copy of these Rapat Rojnamchas are Ex.P-9 and Ex.P-9/A. These Rapat Rojnamchas depicts the mutual/private partition of the joint land. The signatures of the appellant-plaintiff in these Rapat Rojnamchas Ex.P-9 and Ex.P-9/A manifest the unequivocal consent for the said partition. As already mentioned, he is an educated person. So, his plea that his

signatures were obtained on these Rapat Rojnamchas under the garb of sanctioning the mutation of inheritance of his father in his favour does not appeal to the reasons. On the basis of these Rapat Rojnamchas, the mutation of partition no. 800 (copy Ex.P-14) has been entered and sanctioned by the concerned Revenue-officer. The sanctioning of the mutation of partition by the Revenue-officer indicates that he has satisfied himself about the factum of the private partition made by the co-sharers.

14. The plea raised by learned counsel for the appellant that respondent-defendants no.1 to 6 and 8 have also taken the stand in the written statement that the mutation no. 800 is not as per the actual possession at the spot and they have no objection if the said mutation is set aside is no ground to make the appellant-plaintiff entitled for the grant of decree in the suit. They also might have some vested interest.

15. The plea raised by learned counsel for the appellant that the land holding of the appellant-plaintiff has been fragmented into different portions, is also no ground to upset the mutation no. 800 of 22.09.2001 as the same has been entered and sanctioned with the consent of appellant-plaintiff, who happens to be the signatory to the Rapat Rojnamchas Ex.P-9 and Ex.P-9/A which are the basis for the sanctioning of the mutation of partition. Thus, the mutation of partition no. 800 dated 22.09.2001 does not suffer from any illegality, which is result of the private/mutual partition of their joint land by the parties including the appellant-plaintiff.

16. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned

Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 24, 2016
s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No