

CR No. 6036 of 2015 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 6036 of 2015 (O&M)

Date of decision: 4.8.2017

Krishan Kumar and others

...Petitioners

Versus

Niranjal Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.P. Bhandari, Advocate
for the petitioners.

Mr. Sanjay Mittal, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 11.8.2015 passed by the learned trial court, whereby their application under Order VII Rule 11 of the Code of Civil Procedure ('CPC' for short) was dismissed, defendants have approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties

A bare perusal of para 1 (a) and 1 (b) of the plaint (Annexure P-1, at page 15 of the paper book, will make it crystal clear that total suit property was not agricultural land. Residential houses were there in khasra

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Nos. 56, 43 and 93. Again, as per jamabandi (Annexure P-5), some land was gair mumkin (manure pit) and gair mumkin (ghair). Once the suit property was no more an agricultural land, provisions of law contained in Section 158 (2) of Punjab Land Revenue Act, 1887, will not be attracted and the learned civil court shall have the jurisdiction to entertain and decide the civil suit for partition. That is what has been rightly held by learned trial court, while passing the impugned order and the same deserves to be upheld.

So far as the judgment of this Court in **Harjinder Singh Vs. Kesar Singh and others, 2014 (2) PLR 188**, relied upon by learned counsel for the petitioners, is concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the petitioners, being distinguishable on facts. In **Harjinder Singh's case** (supra), plaintiff filed a suit for declaration challenging the order of Assistant Collector 2nd Grade, passed in an application for partition. Such is not the fact situation in the present case and that makes the whole difference.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

Similar question fell for consideration of this Court in **Kalyan**

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Dass Vs. Som Nath, 1987 PLJ 4, wherein it was held by this Court that if the suit properties consist of agricultural land, buildings and factories constructed thereon, civil court has the jurisdiction to entertain and decide the suit for possession by way of partition. Again, in **Rattan Vs. Ram Saroop, 1989 (1) PLR 108**, this Court has reiterated the abovesaid view. Having said, that this Court feels no hesitation to conclude that the learned court below was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

When the learned counsel for the petitioners was confronted with this fact, as to whether the share or title of the plaintiffs-respondents was in dispute at any point of time, he had no answer and rightly so, it being a matter of record. He also could not point out as to what kind of prejudice has been caused or was likely to be caused to the petitioners, by passing the impugned order. Thus, except a tussle of ego, no substance has been found in the case set up by the defendants before this Court. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

4.8.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No