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

**RSA No. 28 of 2012 (O&M)
Date of decision: 15.11.2017**

Deen Mohammad**.....Appellant**

versus

Nazar Hassan and others**.....Respondents****Coram: Hon'ble Mr. Justice Rajbir Sehrawat****Present:** Mr. Rakesh Kumar Sharma, Advocate
for the appellant.

Mr. Diwan S.Adlakha, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. The present appeal has been filed by the defendant No.1 against the concurrent judgments and preliminary decrees passed by the Courts below in a suit filed by the plaintiff for possession of share in the joint property by partition. For convenience, the parties are referred herein as plaintiff and defendant, as they were described and referred in the original suit.
2. The brief facts of this case are that, the plaintiff filed a suit for possession by way of partition, to the extent of half share in land measuring 4 Kanals 12 Marlas fully described in the plaint which was claimed to be comprised in Khasra No. 99. It was claimed by the plaintiff that he had purchased the land only in Khasra No. 99 vide registered sale deed dated 25.02.1987 and mutation for that was also entered in the revenue record i.e. mutation No. 160. It was still further claimed that defendant No. 1 had filed an application for partition before the Assistant Collector, 2nd Grade. However, that application was rejected on the ground that since the land was *gair mumkin*, residential land, therefore, he could file a civil suit before the Civil Court for

partition of the land. Thereafter, the defendant No. 1 even filed a suit for injunction restraining the plaintiff from interfering in the peaceful possession of the suit land. That suit was decreed. The plaintiff had filed an appeal against that judgment and decree. Although that appeal was rejected, however, the Court had granted liberty and had observed that the present plaintiff could file a suit for partition, if he so desires. Resultantly, the present suit had been filed by the plaintiff.

3. On notice, the defendants came present and filed their written statement admitting that plaintiff had purchased half share from his predecessor-in-interest. However, it was claimed that the vendors of the plaintiff were not in actual physical possession of the suit. So the plaintiff never remained in possession of the suit land. It was further claimed that defendant No. 1 had purchased the land measuring 3 Kanal 13 Marlas being 1/4th share of Attar Singh out of the land measuring 14 Kanal 12 Marlas bearing Khasra No. 41//21/3, 22/2, 23/1 and Khasra No. 99 vide registered sale deed 04.06.1980 and his vendor had given actual physical possession of the purchased land in Khasra No. 99 only. Therefore, it was pleaded by defendant No. 1 that, right from the date of purchase, the defendant No. 1 had been in possession of the suit land measuring 3 Kanal 13 Marlas in Khasra No. 99. It was further claimed that he raised the construction of his residential house on the suit land and erected a temporary shed for tethering cattle. Besides this, he also planted 70-80 trees of various species over the suit land. It was also averred by defendant No. 1 that the vendors of the plaintiff were also co-sharers in Khasra No. 41//21/3, 22/2, 23/1 and Khasra No. 99. The plaintiff shall be deemed to have stepped into the shoes of the vendors only, therefore, he cannot claim to be the purchaser of the land exclusively comprised in

Khasra No. 99. It was further claimed that defendant No. 1 had become owner of the suit property in Khasra No. 99 by way of adverse possession; since he had constructed his house over the suit property and he had been actually residing in that house.

4. Parties led their respective evidence.

5. After hearing the parties, the learned trial Court decreed the suit and passed the preliminary decree holding that the plaintiff had purchased the land in a particular Khewat which comprised Khasra No. 99 only. Therefore, he had rightly applied for the partition. Aggrieved against the judgment and decree, the defendant No. 1/appellant herein, filed an appeal before the lower Appellate Court. However, lower Appellate Court also dismissed the appeal filed by the present appellant/defendant No. 1. While dismissing the appeal, the lower Appellate Court held that defendant No. 1, as per his case, had purchased land measuring 3 Kanal 13 Marlas, being 1/4th share out of land measuring 14 Kanal 12 Marlas comprised in Khewat No. 13 Khatauni No. 56 bearing Khasra No. 41//21/3, 22/2, 23/1 and Khasra No. 99. However, he claims to be in possession of the land in Khasra No. 99 only. The Court held that the jamabandies, available on record, show that property comprised in Khasra No.41//21/3, 22/2 and 23/1 are comprised in different khata as compared to Khasra No. 99. Therefore, defendant No. 1 is co-sharer in different khewat also on the basis of the same purchase. However, the plaintiff is shown to be a co-sharer limited only to Khasra No. 99 along with other defendants, as mentioned in the revenue record. Thus, the lower Appellate Court held that there is nothing wrong or illegal in the judgment and decree passed by the trial Court.

6. Arguing the appeal, learned counsel for the appellant has submitted that the

suit filed by the plaintiff was bad for partial partition. Secondly, it is argued by the learned counsel for the appellant that all the co-sharers have not been impleaded as party in the suit by the plaintiff. Therefore, the suit could not have been maintained by him.

7. On the other hand, learned counsel for the respondents/plaintiff submits that he purchased land only in Khasra No. 99. He is not co-sharer in any other part of the land. So he could file suit for partition of only Khasra No. 99. So far as joinder of the parties is concerned, it is submitted by learned counsel for the plaintiff/respondent that all the persons who are recorded as co-sharer in khewat in this Khasra No. 99 were impleaded as party. Therefore, the suit was validly filed and was very much maintainable.

8. Having heard learned counsel for the parties and perusal of the record with able assistance of the learned counsel, this Court is of the considered view that the argument raised by the learned counsel for the respondent/plaintiff deserves to be sustained. The argument of the learned counsel for the appellant that the suit is bad for partial partition is not supported by the evidence proved on record. The jamabandi for the year 1986-87, Ex. D13 on the record, which was the jamabandi, in force, immediately before the purchase of the land by the plaintiff, shows that there were three parties as co-sharer in the Khewat in which khasra No. 99 only was comprised. Those three parties were the predecessors-in-interest of the plaintiff, defendant No. 1 and the other defendants impleaded as defendant in the present suit. Predecessors-in-interest of the plaintiff sold their entire share in this khewat to the plaintiff. Therefore, only three parties were recorded in the revenue record, as owners, in the khewat number in which Khasra No. 99 was comprised; even in the subsequent revenue record. A perusal of the record

shows that all the persons who were recorded as owners in the khewat in which this khasra No. 99 is comprised; have been duly impleaded as defendant in the suit. Therefore, the suit is not bad for non-joinder of the parties. The record also shows, as mentioned above, that except these three parties there is no one else who are shown to be a co-sharer in the khewat in which khasra No. 99 is comprised. Therefore, the plaintiff has rightly sought partition of khasra No. 99 only. He is not under legal obligation to seek partition of those khasra numbers also in which defendant No. 1 may be co-sharer with other persons. The plaintiff is concerned only with that land in which he is the co-sharer and not regarding the land in which any one of his co-sharer may be a co-sharer with some other persons as well.

9. Having reached this stage; learned counsel for the defendant submits that it is admitted that as per the sale deed in his favour, he was given the possession of the land measuring 3 Kanal 13 Marlas only in khasra No. 99. He has raised his construction also. Therefore, his possession has to be protected. However, at the time of passing of the preliminary decree this question is not to be considered by the Court. The appellant would be at liberty to raise this plea before the Court at the time of drawing of the final decree but in accordance with the law.

10.No other argument was raised.

11.In view of the above, findings no illegality or perversity in the findings recorded by the Courts below, the same are affirmed.

12.The present appeal is dismissed being devoid of any merits.

15th November, 2017

shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	No