

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

**R.S.A No. 2842-2016 (O&M)
Date of decision : 16.08.2017**

Khazan Singh ...Appellant

versus

Ram Kishor through LRs Bijender Singh & ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Predhuman Yadav, Advocate
for the appellant

RITU BAHRI, J. (Oral)

The appellant has come up in regular second appeal against the concurrent finding of facts recorded by both the Courts below, whereby the suit of the plaintiff-appellant (herein after to be referred as 'the appellant') has been dismissed.

The case of the appellant is that he is co-sharer to the extent of 1/4th share in Khasra No. 118 by virtue of jamabandi for the year 2004-05. Further he is in exclusive possession of the suit property by virtue of interim arrangement but the suit land has not been partitioned by metes and bounds and the oral partition has not been reflected in the revenue record.

Both the Courts below dismissed the suit of the appellant on the ground that the suit has been filed by the appellant only in respect of Khasra No. 118 measuring 1 kanal 14 marlas whereas jamabandi (Ex P1) depicts that there were khasra No. 68, 122 and 129 which are also joint. It was held that the pleadings and evidence of the appellant qua remaining khasra

numbers are silent. P.W.1 Khazan Singh in his cross examination had stated that Hukam Chand had sold his share but he did not know in which khasra No./plot Hukam Chand had got his share. He did not know as to whether sons of Jawala would live in one plot or separately. P.W.2 Rameshwar (brother of the appellant) had stated in his cross examination that during consolidation, 06 plots were allotted. 68, 112, 122 and 129 were allotted to all. All the plots were partitioned during the life time of ancestors. He had received share in Plot No. 124. Thus, the Courts below while relying upon judgment of *Jagir Singh v. Naranjan Singh, 2015(1) (RCR) Civil 149 (P&H) and Karan Singh vs. Kakhbir Kaur and others 2011(2) PLR 698* held that the appellant has an efficacious remedy to file a suit for partition and the mere suit for permanent injunction was held to be not maintainable under Section 41(h) of the Specific Relief Act.

Learned counsel for the appellant submits that the partition proceedings are pending between the parties but this cannot be made a ground to allow the appeal of the appellant.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

16.08.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No