

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

RSA No.2578 of 2015 (O&M)

Date of Decision: 30.10.2017

Shamsher Singh and others

.....Appellants

Vs.

Hari Chand and anr.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Sandeep Bansal, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

The present appeal has been filed against the judgment and decree dated 19.09.2014 passed by learned Additional District Judge (Adhoc), Fast Track Court, Hoshiarpur and judgment and decree dated 22.11.2011 passed by the learned Civil Judge (Jr.Divn.) Mukerian whereby, the suit filed by the plaintiffs/respondents has been decreed.

Learned counsel for the defendants/appellants has informed that appellants/defendants have not initiated any partition proceedings before the revenue authorities till date.

The facts not in dispute that the suit land jointly owned and possessed by the plaintiffs and defendants and plaintiffs have half share in the suit land the defendants No.1 and 2 have got half share respectively. The plaintiff's case was that the defendants have occupied the land beyond their shares and threatened to occupy remaining land by raising forcible constructions over the suit property for which they have got not right to do so. The defendants also threatened to block the area shown B to B1 forcibly which was being used as passage by the plaintiff's. The plaintiff's had requested the

On notice, defendants appeared and filed written statement by raising preliminary objection that the present suit was not maintainable and the the plaintiffs had not mentioned all the khasra numbers which were joint so the partial partition was not maintainable as per the revenue record. Khewat No.135, Khatoni No.622, Khasra No.24//2(7-2), 3(8-0), 4(8-0) total 23 Kanals 12 marlas in Chahi and 04 marlas was Gair Mumkin Abadi which had not been mentioned by the plaintiff in the present suit. From the pleadings of the parties, following issues were framed:

1. *Whether the plaintiff was entitled to the possession of the disputed property by way of partition? OPP.*
2. *Whether the plaintiff was estopped from filing the present suit by his own act and conduct? OPD.*
3. *Whether the plaintiff had not cause of action to the file the present suit? OPD.*
4. *Whether the site plan filed by the plaintiff was incorrect? OPD.*
- 4(a) *Whether the suit was not maintainable? OPD.*
- 4(b) *Whether suit was bad as plaintiff had not mentioned whole of the properties and partial partition was not permissible? OPD.*
5. *Relief.*

After filing of written statement the Courts below had returned to the finding on fact that Khasra No.24//2,3,4 total 23 Kanal 12 Marla as per jamabandi for the year 1998-99 out of which 4 marla was Gair Mumkin Abadi had not been included in the suit land and therefore, since the suit was bad for partial partition as whole of the suit property between the parties was not included, so the same was liable to be dismissed. As per Jamabandi ExP-A, nowhere, it was mentioned that there was abadi in Khasra Nos.24/2,3,4.

However, in jamabandi Ex.DR for the same khasra numbers, it was shown that

there was Gair Mumkin 4 marlas of land out of these Khasra numbers and the said 4 marlas are reserved for installation of tubewell. Keeping in view the law laid down in Financial Commissioner, Punjab in Gurdev Singh Vs. Jawala Singh, 1971 PLJ page 552, that when the Kotha was constructed on the agricultural land, the same was not non-agricultural property and the jurisdiction of the Civil Court over such land was barred. It has been further held in this case law that when a Kotha was constructed on the agricultural land which was appurtenant to this agricultural land and was primarily subservient to the basic needs and purposes of the agriculturists does not change the very character from agricultural land to non-agricultural land and civil Court has not jurisdiction over such a land.

Keeping in view the above fact, the suit was held to be maintainable and with regard to the possession in the house which was joint in nature, it has been held that even the defendants had admitted the share of the plaintiff to the extent of half, the suit has been rightly decreed by both the Courts below.

So in the light of the discussion, there is no substantial question of law is arising out and the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

30.10.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No