

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

**RSA No.4080 of 2015 (O&M)
Date of Decision: July 11, 2017**

Avtar Singh

..... Appellant

Versus

Bhalwant Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anil Kumar Garg, Advocate
for the appellant.

DEEPAK SIBAL J. (ORAL)

The appellant, who was one of the defendants in the suit has filed the present appeal to assail therein the concurrent findings recorded by the Trial Court and the Appellate Court. Such findings were recorded by both the Courts while decreeing the suit filed by the plaintiff-respondent No.1 which had been instituted seeking therein the grant of permanent injunction against the appellant and his co-defendants from dispossessing respondent No.1 forcibly and illegally from the land measuring 4 bighas 12 biswas 16 biswas as was detailed in the headnote of the plaint.

Learned counsel for the appellant submitted that the suit of respondent No.1 seeking permanent injunction could have not been decreed as he was not in possession of the suit land and it was the appellant along with proforma respondents No.2 and 3, who were in its actual and physical possession; respondent No.1 had filed the suit primarily on the basis of orders passed in his favour by the Revenue Authorities in partition proceedings which never took place and even if

there were any such proceedings, the same being behind the back of the appellant were not binding on him.

The submissions made by learned counsel for the appellant have been considered and the record perused.

To establish his possession over the suit land, respondent No.1 had produced and proved on record *Jamabandi* for the year 2006-2007 (Exhibit P-1) which clearly depicted that partition of the suit land took place through order dated 21.01.2010 passed by the Assistant Collector, Grade-I, Ludhiana and in execution of the warrants of possession issued in pursuance of the aforesaid order, respondent No.1 was put in symbolic possession of the suit land as he was already found to be in actual physical possession of the same. The entries in the *Jamabandi* (Exhibit P-1) have attached to them the presumption of truth which of course is rebuttable but no evidence was led by the appellant to controvert the afore entries in the *Jamabandi*.

In the pleadings of the parties, the factum of partition proceedings is virtually admitted by the appellant. In this regard, para No.4 and 5 of the plaint and the reply thereto by the appellant may be referred. The same read as under:-

Para No.4 and 5 of the Plaint

“4. That the plaintiff moved an application for partition of the suit land in the year 2009 on the basis of previous possession of the parties and accordingly after proper proceedings, the process of partition was completed in the month of November 2009 and mutation was sanctioned and entered in the name of the plaintiff and defendants in the separate possession.

5. That as per the partition mentioned above the plaintiff has been put into exclusive separate possession of the suit land on which he was already in exclusive, peaceful possession since 2005.

Para No.4 and 5 of the Reply

“4. That para No.4 of the plaint so far it relates to procuring of partition order is a matter of record, but the same has never been implemented on the spot. It is only in the papers. The answering defendants are in cultivating possession.

5. That Para No.5 of the plaint is wrong and denied. The plaintiff is not in possession. What to talk of exclusive possession. What to talk of exclusive possession, moreover he is not in possession. No cause of action accrued to the plaintiff to file the suit.”

Respondent No.1 had specifically pleaded that he had moved an application for partition of the suit land in the year 2009 which was on the basis of previous actual possession of the parties since the year 2005; the process for partitioning the land was completed and as an outcome thereof, respondent No.1 was put in possession of the suit property; handing over of the possession by the Revenue Authorities to respondent No.1 was termed as symbolic since at the time of handing over of the possession, at the spot, he was already found to be in actual physical possession of the land in dispute and that mutation was also sanctioned in favour of respondent No.1.

The appellant did not deny that the partition proceedings took place. He rather admitted the same by stating that “so far it relates to procuring of partition order is a matter of record”.

It is not disputed by learned counsel for the appellant that the

order dated 21.01.2010 passed by the Revenue Authorities on the basis of which respondent No.1 was put in symbolic possession of the land in dispute of which he was already found to be in the actual physical possession was never challenged by the appellant or his co-defendants. That order was thus allowed to become final by the appellant and his co-defendants.

Learned counsel for the appellant also did not dispute that the appellant or his co-defendants did not challenge the afore-referred entries in the *Jamabandi* (Exhibit P-1) in which it was specifically stated that on the basis of the order dated 21.01.2010 passed by the Revenue Authorities, respondent No.1 was being given symbolic possession of the land in dispute of which he was already found to be in actual physical possession.

A specific finding has been returned by the trial Court that the appellant, in his deposition, had admitted, that he was in cultivating possession of his share of the property even before the death of his father. Meaning thereby, that the parties to the suit were put into separate possession of their respective shares out of the suit land. This fact, coupled with the entries in the *Jamabandi* (Exhibit P-1) showing respondent No.1 to be in possession of his own share of the suit land clearly brings out the falsity in the case of the appellant to the effect that respondent No.1 was not in possession of the suit land.

In view of the above, the concurrently findings returned by the Trial Court as also the Appellate Court that respondent No.1 warrants no interference by me.

No question of law, much less a substantial question of law is found to arise in the present appeal.

Dismissed.

No costs.

July 11, 2017
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(DEEPAK SIBAL)
JUDGE

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