

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

Date of decision: 13.09.2017

RSA No.6221 of 2016 (O&M)

Dalip Singh

...Appellant

Vs.

Bimla Devi & others

...Respondents

RSA No.6222 of 2016 (O&M)

Dalip Singh

...Appellant

Vs.

Bimla Devi & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Avnish Mittal, Advocate, for the appellant.

RAJIV NARAIN RAINA, J.

1. This order disposes of the aforementioned two regular second appeals i.e. RSA No.6221 of 2016 arising out of suit for permanent injunction filed by plaintiff-respondents Bimla Devi etc., which was decreed vide judgment and decree dated 06.08.2013; and RSA No.6222 of 2016 arising out of suit for declaration and permanent injunction as consequential relief instituted by plaintiff-appellant, which was dismissed vide judgment and decree dated 04.07.2013. However, for facility of reference, the facts are taken from RSA No.6221 of 2016.

2. The case of plaintiff-respondents Bimla Devi etc. is that the suit land is owned and possessed by them as per jamabandi for the year 1999-2000. At the time of filing of the suit, they have sown paddy on the suit land. Earlier the land was part of joint khewat, which was partitioned amongst their co-

sharers by the competent court and mutation in this regard was sanctioned on the basis of partition. The defendants had challenged the partition proceedings by way of a civil suit, but they failed to obtain injunction up to the High Court. The defendants are said to be smarting under the order and interfering in their possession so they may be restrained by a decree of permanent injunction to keep peace over the property in dispute. The suit of the plaintiff-respondents for permanent injunction was decreed by the Additional Civil Judge (Senior Division), Guhla vide judgment and decree dated 06.08.2013.

3. The separate appeals filed by the appellant (Dalip Singh) and Jagni Devi widow of Phuman Singh (deceased) through her LRs have been dismissed by the Learned Additional District Judge, Kaithal for good and sufficient reasons vide judgment and decree dated 20.07.2016 inter alia on the short ground that the disputed partition was challenged by the defendants before the Collector. He has lost before the Commissioner and the revision petition preferred in this Court was dismissed as withdrawn. When defendant has already exhausted his remedy before the revenue authorities, he cannot re-start the dispute relating to the same land in the Civil Court. Moreover, his separate suit too has been dismissed and possession entry has already been changed vide Rapat entered in this regard in the revenue record. A finding of fact has been returned that the plaintiffs are in possession of the suit property.

4. Late Jagni Devi widow of Phuman Singh through her LRs through whom defendants claimed possession as co-sharers has been found not to have share in property left by late Rameshwar son on Phuman i.e. husband of plaintiff No.1 - Bimla Devi. The Additional District Judge, Kaithal noticed that in the connected appeal decided separately on even date, Jagni Devi has been held to be not the mother of Rameshwar. That should be the end of the matter.

5. I may notice the order passed in CWP No.28240 of 2013 titled 'Dalip Singh Vs. State of Haryana & others' decided on 18.07.2017, which was brought to challenge the order dated 08.08.2013 passed by the Financial Commissioner, Haryana dismissing the revision petition preferred by Dalip Singh. The plea of Dalip Singh that he was not served in the partition proceedings has been rejected by the Civil Court with the categorical finding that the petitioner was served. The revision petition was filed with an application to condone the delay of 915 days. This Court upheld the order of the Financial Commissioner, Haryana to the effect that Dalip Singh was not able to produce sufficient cause to condone inordinate delay. However, while dismissing the writ petition, there came by an observation in the order that even otherwise the entire partition proceedings are over and done with and *Sanad Taksim* (mode of partition) has been issued and the entries have also been made accordingly in the revenue papers.

6. In view of the above, both the appeals have no merit and are hereby dismissed in *limine* with no question of law arising for consideration.

13.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>