

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4321 of 2017 (O&M)

Date of Decision: 11.09.2017

Sagli Ram and others

... Appellants

Versus

Vikram Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Om Pal Sharma, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. The main plank of attack to maintain the suit against the Sanad Taksim (partition) is an order dated August 27, 2012 passed by the learned Single Judge of this Court in CWP No.23377 of 2011 which petition was dismissed with liberty to the petitioners, the present appellants, to file a civil suit, if so advised. In that petition not only was the Sanad dated February 15, 2011 challenged but also the partition order dated April 29, 2010 defining shares of the co-owners. The petition was dismissed by passing the following order:-

“The petitioners have an efficacious alternative remedy of filing a civil suit against the Sanad issued. No case for interference in exercise of writ jurisdiction is made out, especially so when the petitioners had slept over their right.

Dismissed with liberty to file a Civil suit, if so advised.”

August 27, 2012”

2. The two Courts below have dismissed the plaintiffs-appellants suit as not maintainable against the partition proceedings finalized before

the revenue authority.

3. The Courts have held that the suit was barred by the provisions of Section 158 of the Punjab Land Revenue Act, 1897 and still further, the suit was held to be not maintainable for want of accrual of cause of action and hit by the doctrine of waiver of rights. The Civil Court could not go into the question of legality of partition order, especially when plaintiffs did not raise any objection regarding property, or part of it, falling in the abadi area of the village in the proceedings before the revenue authorities.

4. Therefore, I would not accept the argument of Mr. Om Pal Sharma, learned counsel appearing for the appellants that entire proceedings should be reopened on the ground that revenue authorities could not have partitioned area falling under abadi which jurisdiction the Civil Court alone can exercise. That right to sue or be heard afresh in the culminated partition proceedings stands waived and therefore I find no jurisdictional reason or error to interfere with the judgments and decrees of the Courts below and would dismiss the appeal *in limini* as devoid of merit.

5. No question of law arises for consideration on the regular second appeal side of this Court against the appellate decree, when it is found suffering from no legal infirmity.

(RAJIV NARAIN RAINA)
JUDGE

11.09.2017
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Whether speaking/reasoned Yes

Whether reportable No