

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

RSA No.611 of 2017 (O&M)

Date of Decision: August 23, 2017

Ajit Singh and another

... Appellants

Versus

Chanan Singh (since deceased) through LRs and others

... Respondents

RSA No.3875 of 2017

Jagir Singh @ Dalbir Singh (since deceased) and others.

...Appellants.

Versus

Narinder Singh and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anil Chawla, Advocate,
for the Appellants.

ANIL KSHETARPAL, J.

CM 1318-C of 2017

For the reasons stated in the application, the same is allowed
and delay of 6 days' in filing the present appeal is condoned.

Main case.

By this common order, I shall be disposing of RSA No.611 of
2017 and RSA No.3875 of 2017.

Plaintiffs claimed to be co-owners and co-sharers in different joint Khewats. Plaintiffs had filed a Civil Suit No.135/ 2009 (subject matter of RSA No. 611 of 2017) for declaration to the effect that sale deeds dated 16.12.1981 and 24.12. 1981 executed by defendant No.1 are illegal, null, void and beyond the share of defendant No.1. Defendant on the other hand claimed that the sale deeds are not beyond the share of defendant No.1.

Learned trial Court as well as the first Appellate Court dismissed the suit on the ground that the appropriate remedy for the plaintiffs is to file a suit for partition. It was noticed by the Court that the defendant No.1 was co-owner and co-sharer in different Khewats and if he had sold land in excess of his share in a particular Khewat, such sale would be adjusted in the land in other Khewat. Ultimately, the Court held that the suit filed by the plaintiffs is not maintainable because the dispute can only be resolved out in the partition proceedings.

Plaintiffs in Civil Suit No.241 of 2006 claiming themselves to be co-owners/co-sharers, challenged the order of partition passed by the Assistant Collector, First Grade, Baba Bakala and the mutation sanctioned pursuant to the partition order. In this case, the Court held that the jurisdiction of the Civil Court is barred under Section 158 of the Punjab Land Revenue Act. The Court further found that the order of partition, which is sought to be challenged, has not even been placed on the file. In these circumstances, the suit was held to be not maintainable.

Appeals preferred were also dismissed.

Learned counsel for the appellants has submitted that the judgements and decrees passed by the Courts are erroneous as the order of partition was passed, without issuing any notice to the plaintiffs/appellants. He further submitted that the file of partition proceedings is not traceable

and, therefore, those orders could not be placed on the file.

I have considered the submission of the learned counsel for the appellants and with his able assistance, gone through the judgements and decrees passed by the Courts below.

It is not in dispute that the Assistant Collector, First Grade, Baba Bakala in exercise of its power under the Punjab Land Revenue Act, ordered partition of the property. The plaintiffs challenged the aforesaid order by way of appeal, revision and second revision. The plaintiffs failed therein. The order of partition has become final. In these circumstances, learned counsel for the appellants is not correct in asserting that the order was passed without issuance of notice or at the back of the plaintiffs/appellants.

It is not in dispute that the parties were co-owners at one point of time. Sale of share by the co-owner, even if in excess, would not affect the rights of the other co-owners.

There is a basic difference between the suit for cancellation of a particular document and suit for declaration that such document is not binding on the rights of the plaintiffs. The suit for cancellation is filed under Section 31 of the Specific Relief Act, 1963 whereas suit for declaration is filed under Section 34 of the Specific Relief Act, 1963.

In the present case, the competent authority has partitioned the property between the co-owners and co-sharers. Even the order of partition has not been placed on the file. In view of Section 158 of the Punjab Land Revenue Act, the jurisdiction of the Civil Court is barred to examine the legality of such order.

In view of the above, I do not find any good ground to interfere

with the concurrent finding of fact arrived at by the Courts below.

Both the appeals are dismissed.

23.08.2017

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No