

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

RSA No.362 of 1990 (O&M)

Date of decision : 02.02.2018

Prem Singh (deceased) through his LRs and another

...Appellants

Versus

Mann Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendant Nos.37 to 39-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiffs for declaration to the effect that the parties are co-owners/co-sharers in the land measuring 522 kanals and 19 marlas and the plaintiffs have right to get the same partitioned.

Only defendant Nos.37 and 39 contested the suit and pleaded that the property has already been partitioned and, therefore, the suit is not maintainable. The trial Court dismissed the suit, whereas the First Appellate Court accepted the appeal and reversed the judgment of the trial Court.

I have heard the learned counsel for the appellants at length and with his able assistance gone through the judgments passed by both the Courts below as well as the records.

Learned counsel for the appellants has vehemently argued that

as per Ex.D1, the judgment dated 24.08.1961, the Civil Court had recorded a finding that the property has been partitioned. He submitted that in view of the aforesaid finding, the plaintiffs have no right to seek declaration as is being prayed for. He has further submitted that the cause of action which the plaintiffs plead is wrong because the partition proceedings filed by the plaintiffs were not dismissed on the ground that the question of title is involved but on the ground that the property has already been partitioned.

I have considered the submissions. However, I do not find any substance therein.

First argument of the learned counsel is based on earlier judgment and decree dated 24.08.1961. It is suffice to note that the plaintiffs were not party to the aforesaid proceedings. The aforesaid suit was filed by the certain proprietors against the Gram Panchayat claiming declaration that they are owners in possession of the property. In that case, neither the plaintiffs nor their predecessors were party. Hence, the aforesaid judgment dated 24.08.1961 would not be binding on the rights of the plaintiffs.

Next argument of the learned counsel is that the plaintiffs had filed an application for partition of the suit property. However, the application for partition was rejected by the Court. Learned counsel has taken me through the order passed by the Collector dated 22.02.1983. Learned Collector had dismissed the appeal filed by the plaintiffs on the ground that the Revenue Authorities cannot sit over appeal against the order passed by the Civil Court and, therefore, the partition application is not being entertained.

In the considered opinion of this Court, once this order was

passed, the plaintiffs were left with no choice but to file a suit for declaration claiming that the property is joint and the plaintiffs are entitled to partition of the same. It is further not in dispute that in the revenue record, the property is recorded as a joint property belonging to all the owners.

Learned counsel for the appellants has submitted that in the possession column, the owners are recorded in a separate possession. I have considered the submission. However, in the ownership column, all the co-owners are jointly recorded as owners. Neither the revenue record nor any order of the Competent Court has been produced on the file to prove that the property was ever partitioned. Still further, the power to partition the agricultural land is only with the Revenue Authorities.

In these circumstances, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

02.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No