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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-898-1993 (O&M)

Date of decision : 08.05.2018

Man Singh

... Appellant(s)

Versus

Bimla Devi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. Vaibhav Sharma, Advocate
for respondent No.9.

Mr. Sunil Panwar, Advocate
for respondent No.10.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent findings of fact, whereby the claim laid to the suit for partition by setting aside the order of Collector dated 30.03.1976 and agreement to sell dated 12.08.1973, had been dismissed by the trial Court and affirmed by the lower Appellate Court.

Succinctly, the facts as enumerated from the pleadings of the parties to the *lis* are that the plaintiff instituted the suit on the premise that Shiv Singh, brother of the plaintiff, had died and the defendants were his LRs. The parties were co-sharers in possession of the agricultural land (suit land). The plaintiff filed an application for partition of the suit land in the Court of Assistant Collector Grade-I, which was allowed vide order dated

21.11.1975. Shiv Singh, husband of respondent/defendant No.1 and father of respondent/defendant Nos.2 & 3 preferred an appeal as the question of title was involved in view of the agreement of partition dated 12.08.1973. The Collector vide order dated 30.03.1976 allowed the appeal holding that the question of title was involved. The order of the Collector was affirmed by the Commissioner vide order dated 10.12.1976. The aforementioned orders were challenged on the premise that the agreement to sell dated 12.08.1973 involved the partition of immovable property and it required compulsorily registration under Section 17(1) (b) of the Indian Registration Act. It was not attested by any attesting witness nor was ever acted upon, for, there was another agreement dated 03.08.1975 in respect of immovable property mentioned in the agreement dated 12.08.1973. The agreement *ibid* had become time barred and the period of limitation i.e. 3 years for execution had lapsed. Even Shiv Singh had sold land measuring 7 kanals 19 marals, which is liable to be adjusted at the time of partition.

The aforementioned suit was contested by the defendant Nos.2 and 3, whereas defendant No.1 was proceeded *ex parte*. It was alleged that in 1973, joint properties of plaintiff and Shiv Singh were partitioned i.e. khasra number 186 was allotted to Shiv Singh, whereas khasra No.188 to the plaintiff. The memorandum of agreement was also signed by parties on 12.08.1973, thereafter had been exclusive owners in possession of respective khasra numbers. The writing was memorandum of previous partition, therefore, it did not require any registration nor attestation. In fact it had been acted upon.

Since the parties are at variance, the trial Court framed the following issues:-

1. *Whether the land in suit is jointly owned by the parties, if so, what are their shares? OPP*
2. *Whether the agreement dated 12.8.73 relating to private partition between the plaintiff and Shiv Singh, now deceased, is null and void and illegal? OPP*
3. *Whether order of Collector dated 30.3.1976 is illegal and void? OPP*
4. *Whether suit is not within time? OPD*
5. *Whether the plaintiff is estopped by his act, and conduct from filing the suit, as alleged? OPD*
6. *Whether the defendants have become owners of the land in suit by adverse possession, as alleged OPD*
7. *Relief.*

The plaintiff in support of his case examined himself as PW-1 and produced the documents (Ex.P1 to P8), whereas defendant Nos.2 and 3 examined Satbir Singh as DW1, Badlu as DW2 and tendered in evidence documents (Ex.D1 and D2).

The trial Court on the basis of preponderance of documentary and oral evidence found that the parties had already effected a partition and dismissed the suit and the appeal laid before the lower Appellate Court also met with the same fate.

Learned counsel for the appellant-plaintiff in support of the memorandum of appeal has relied upon the following submissions:—

- i) Both the Courts below have abdicated in dismissing the suit in not reading the contents of agreement dated 12.08.1973 (Ex.D1), which was an agreement in presenti and therefore, required registration as per Section 17 (1) of the Indian Registration Act.
- (ii) The suit was maintainable, for, the question of title had been left open. It is, in that background, the agreement dated 12.08.1973 along

with the orders passed by the revenue authorities were challenged.

(iii) The contents of the agreement *ibid* pertained to an action having been taken in presenti and not of any past act reduced into right, therefore, the findings, in this regard, are required to be set aside.

(iv) It erred in holding that the document (Ex.D1) was memorandum of partition and not deed of partition, whereas it was converse.

(v) The Courts below failed to give due weightage to the recital in the sale deed dated 16.09.1974, as out of khasra No.186, Shiv Singh sold the land measuring 8 kanals, which only reflected a share and specific khasra number. The revenue record was also reflected the nature and character of the property to be in joint possession, for, jamabandi for the year 1969-70 is previous to the period of alleged partition.

(vi) The Courts below could not have dismissed the suit holding that the limitation for seeking declaration is three years, for, it was a claim qua title, for which, there is no limitation, in essence, there was no legal partition, thus, urges this Court for setting aside the concurrent findings, under challenge.

Mr. Vaibhav Sharma and Mr. Sunil Panwar, learned counsel appearing on behalf of respondent Nos.9 & 10, respectively submitted that the concurrent findings are liable to be upheld as there is no gross illegality and perversity. The plaintiff when appeared in the witness box admitted his signatures as well as the thumb-impressions on the agreement and further admitted that he was Matric Pass and knew 'Urdu' for the document dated 12.08.1973, which was recited in the 'Urdu', but it was stated that the said writing pertained to the suit filed in 1985, whereas the orders of the

Collector and the Commissioner were of 1976. No explanation has come forth in not challenging the documents, despite the fact that the revenue authorities had held that it is only civil court, which would have jurisdiction, for, question of title is involved.

It was next contended that the suit was barred as per the provisions of Section 117(2)(c) of the Punjab Land Revenue Act and the remedy for the appellant-plaintiff was to file an appeal before the District Judge. In support of contention, relied the *ratio decidendi* culled out by this Court in “Smt. Sandhya V/s Shamsher Singh” 1990 (2) PLR 597, thus, urged this Court for dismissal of the present regular second appeal by upholding the concurrent findings, under challenge.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goel, for, the cross-examination read out during the course of hearing by the respective parties, leaves no manner of doubt that the appellant-plaintiff had admitted the signatures/thumb-impressions on the writing, much less, partition of the property, though try to wriggle out of such admission by referring to the schedule of property. In the present case, doctrine of acquiescence would apply as the plaintiff remained silent for a period of almost nine years in not assailing the orders of Collector and Commissioner, despite acquiring knowledge that the defendants had come out with the document, perhaps he had some fear, of having not confronted with the original documents, which were recited in 'Urdu' Language, known to him. For all this period, the parties continued to enjoy their respective shares in the khasra No.186, 188 and the entire area was 139 kanals 18 marals. The contents of the partition

deed dated 12.08.1973 had been read over, which do not leave any doubt in mind to form an opinion that it was in “presenti”, for, it was specifically written that everything had already done, much less, parties were put into their respective possession, for all intents and purposes, the plaintiff was a consented party to the private partition, therefore, estopped to challenge the same in the manner and mode, indicated above.

As regards the objections qua maintainability of the suit, I am not in agreement with the submissions of Mr. Shamra and Mr. Panwar, for, there is a specific recital in the order of the Collector and upheld by the Commissioner for rejecting the application for partition submitted by the plaintiff as the question of title was involved. In such circumstances, the question of title can only be raised before the Civil Court as per the provisions of Section 9 of the Code of Civil Procedure.

As an upshot of my observations, the judgments and decrees of the Courts below do not call for interference or fall within the realm of illegality and perversity. No ground is made out for interference, much less, no substantial question of law arises for determination.

Accordingly, the present regular second appeal is dismissed.

08.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**