

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

RSA No.553 of 2010 (O&M)

Date of decision : 21.09.2018

Kali Dass and others

...Appellants

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S. Dadwal, Advocate for the appellants.

Mr. Arun Bakshi, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Civil Misc. No.1539-C of 2010

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of Gian Chand and Hari Dass-appellants, as mentioned in para Nos.3 & 4 of the application, are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application allowed.

RSA No.553 of 2010 (O&M)

Plaintiffs-appellants are in the Regular Second Appeal against judgment passed by the First Appellate Court.

The plaintiffs were owners of land measuring 7 kanal

comprised in khasra No.20(new No.41 post-consolidation). Out of this land measuring 1 kanal 10 marla was within residential area, whereas remaining portion was part of the agricultural land. Plaintiffs, vide sale deed dated 25.05.1976, sold southern portion of the property situated in abadi to Ram Dass and Roshan Lal. It is not disputed that Ram Dass and Roshan Lal were put in possession of a specified portion and they constructed their residential house on the same. Defendants purchased the residential house constructed by Ram Dass and Roshan Lal, vide two sale deeds dated 12.01.1999 and 30.03.2000.

When plaintiff appeared in evidence, he admitted that house was constructed by Ram Dass and Roshan Lal and defendants have not raised any construction.

Plaintiffs, after having sold a specific portion and after allowing the construction to be raised thereon, have chosen to file the present suit for partition of land measuring 1 kanal and 10 marla which is situated in residential area. It is a case of the plaintiffs that as per the Revenue Record, they are co-sharers in the property and, therefore, entitled to partition of the same.

On the other hand, it is the case of the defendants that once a specified portion has been sold, which was a constructed house, the concept of joint ownership ceases to exist. He further submits that it is the plaintiff, who have sold a specific portion of the property in abadi, vide sale deed dated 25.05.1976. After sale of the property, purchasers namely Ram Dass and Roshan Lal were allowed to raise construction. Thus, Ram Dass and

Roshan Lal were exclusive owners of the house constructed by them. He has further submitted that the aforesaid constructed house has been sold to the defendants-respondents vide three registered sale deeds noticed above.

This court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellants with all vehemence at his command has submitted that the reasons assigned by the learned First Appellate Court are erroneous. He submitted that the partition of non-agricultural land is not permissible under the Punjab Land Revenue Act, 1887. He further submitted that the suit is not bad for partial partition. Learned counsel further submitted that in all the sale deeds, reference is to the undivided share in the property. Counsel also submitted that learned trial Court had correctly decreed the suit by way of partition. Learned counsel further submitted that while referring to the sale deed dated 25.05.1976, it refers to land comprised in 4 khasra numbers and in the aforesaid 4 khasra numbers Ram Dass and Roshan Lal had purchased an undivided share.

On the other hand, learned counsel for the defendants pointed out that entire effort of the plaintiffs is to oust the defendants from their residential accommodation. No doubt, plaintiffs are entitled to 5 shares out of total 7, however, partition of the property which is in residential area would take away major part of the residential area from the defendants to the plaintiffs.

This Court has heard the learned counsel for the parties at

length and is in the considered view that if a property is situated within residential area, reference to khasra numbers and concept of joint ownership merely with reference to the entry in Jamabandi does not exist. Once in residential area a property is sold by specifically identifying a portion of the property, then the purchaser does not become co-owner in the entire khewat or khata. It is not in dispute that land measuring 1 kanal 10 marla is the only residential area. Coupled with this fact, once the plaintiffs did not object when Ram Dass and Roshan Lal constructed the house, it is apparent that specified portion sold through sale deed dated 25.05.1976 was not being disputed and they were permitted to raise construction. Learned counsel for the defendants is correct in asserting that his clients i.e. defendants have purchased the constructed house. Such being the position, if the suit filed by the plaintiffs is decreed, it would result in driving out the defendants from their residential house. Still further, it is well known that the property which is situated in residential area is comparatively more valuable than agricultural land. This is what the plaintiffs wish to achieve through the present suit. In fact, the plaintiffs have now become dishonest after having sold a specified portion to Ram Dass and Roshan Lal in the year 1976 and after having permitted them to raise construction. The Courts cannot be party to the aforesaid evil design of the plaintiffs which they seek to achieve by filing the present suit. Plaintiffs are clearly estopped from claiming that entire property is joint.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.09.2018

NI

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-Yes/No

Whether reportable:-Yes/No