

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

**RSA No.2866 of 2011 (O&M)
Date of Order:07.12.2018**

Krishna Devi

..Appellant

Versus

Bohti Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S.Chadha, Advocate,
for the appellant.

Mr. Adarsh Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgments passed by the courts below partially decreeing her suit for possession by way of partition as also partially decreeing the counter claim filed by the defendants while dismissing the relief of rendition of accounts claimed by the plaintiff.

Smt. Krishna Devi-Plaintiff, Smt. Bohti and Smt. Raghbiro, defendants no.1 and 2 are sisters. Property succeeded from a common ancestor namely Khajan Singh, father, is sought to be partitioned.

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

Learned counsel for the appellant has submitted that the courts below have erred in ordering division of the property identified as plot

no.14 to the extent of 1/3rd share each, although, originally property identified by plot no.14 was owned by two brothers Bishan Singh and Khajan Singh and therefore, 50% of the property belong to Bishan Singh and, therefore, plaintiff as well as defendants no.1 and 2 would get share only in the property owned by Khajan Singh in plot no.14.

On the other hand, learned counsel for the respondents while drawing attention of the court to jamabandi-the revenue record has submitted that plot no.14 was exclusive in the share of Khajan Singh. He submitted that as per the revenue record, three brothers namely Bishan Singh, Chiranji Lal and Khajan Singh were co-sharers along with others in the land measuring 4 kanals and 3 marlas. He submitted that share of three brothers comes to little more than ½ in the land measuring 4 kanals and 3 marlas and hence the plot in question i.e. Plot No. 14 after sale deed, executed by various brothers out of this property came to 166 square yards i.e. Plot no.14. He further submitted that this contention was never raised by the plaintiff before the courts below.

On careful perusal of jamabandi for the year 1997-1998, it is apparent that Rajbir Singh son of Bishan Singh, Khajan Singh and Chiranji sons of Ram Sarup were owners of 43/83 share to the equal extent amongst themselves of land comprised in Rect. No.49, khasra no.18/1, measuring 4 kanals 3 marlas along with others, which is equivalent to 83 marlas. Plaintiff has not led any evidence to prove that share of Bishan Singh and Khajan Singh jointly at the time of death was only 166 sq. yds. i.e. plot no.14. Plaintiff has claimed that this property was sold to her by Khajan Singh and Bishan Singh through an affidavit which both the courts have rejected as there cannot be any transfer of the immovable property without a

registered sale deed.

Next argument of learned counsel for the appellant is to the effect that there was an old Maruti Car value whereof has been claimed by the plaintiff to be Rs.100000/- and defendants have also admitted that the maruti car was of worth Rs.50,000/- but the courts have not ordered partition/rendition of account. It may be noticed that the suit was instituted in the year 2001. Now that car must be worthless. Still further, on careful perusal of the judgment of the first appellate court, it is apparent that no argument in this regard was raised.

Next argument of learned counsel for the appellant is that the sale deed got executed by the defendants in favour of defendants no.3 and 4 with respect to land measuring 361 sq. yds. executed on 05.12.2000 was also in fact having an installed weigh bridge and the sale is only with respect to the land and hence the weigh bridge should have been partitioned and share in the income of the weigh bridge should be decreed in favour of the plaintiff

On the other hand, learned counsel for the defendants has drawn the attention of the court to the registered sale deed which clearly proves that only plot was sold. Payment of entire sale consideration was admitted. Sale was in between the family members. Still further, official has appeared in evidence and stated that this weigh bridge was installed for the first time in 2001 and there is no record of previous regarding weigh bridge which was in the name of Hari Om Dharam Kanta after 30.09.1997. He has also pointed out that earlier weigh bridge was of 30 tons capacity and the present weighed ridge is of 40 tons capacity. In such circumstances, courts below have correctly held that only land was sold through registered sale

deed and weigh bridge has been installed by defendant nos.3 and 4 themselves. Even if there was an old weigh bridge, if that weigh bridge stopped operation and thereafter new weigh bridge was installed after the registration of the sale deed dated 05.12.200, the plaintiff cannot claim any share in the property.

In view of the aforesaid, this court does not find any good ground to interfere with the concurrent findings of facts arrived at by both the courts below. Appeal dismissed.

07th December, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No