

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

R.S.A.No.4265 of 2011

Chand Kaur @ Gurbachan Kaur

....Appellant

Versus

Amir Singh and Ors.

....Respondents

Date of Order: 26.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Chopra, Advocate for the appellant.

Mr. K.S. Boparai, Advocate for respondent No.1.

Mr. Gurcharan Dass, Advocate for defendant Nos.2 to 5.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff No.2 is aggrieved of the concurrent findings recorded by both the courts whereby suit for possession by way of partition has been dismissed by learned Civil Judge (Jr. Div.), Ludhiana vide order dated 15.9.2003 and the appeal filed against the same was also dismissed by lower Appellate Court vide judgment and decree dated 24.2.2010.

The plaintiffs instituted the suit claiming separate possession by way of partition in respect of the land measuring 23 Bigha 07 biswa and 12 biswasi situated in village Daaba, Hadbast No.262, Tehsil and District Ludhiana on the premise that the parties to the lis were joint owners and claimed partition of the property by metes and bounds.

Defendant No.1 contested the suit and raised objections that the suit was not maintainable, for, the plaintiffs and defendant Nos.2 & 3 had already sold their entire share, thus they were not owner in possession of any portion. The partition had already taken place long back. It is only an act of greed that the plaintiffs by taking advantage of some entry in the

revenue record, which was not correct, filed the suit.

The trial Court on the basis of pleadings of parties framed the following issues:

- “1. Whether the plaintiffs are the owners to the extent of shares as mentioned in the heading of the plaint?OPP*
- 2. Whether the plaintiffs are entitled to decree of separate possession by partition?OPP*
- 3. Whether the suit is bad for non-joinder of necessary parties?OPD*
- 4. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 5. Whether the suit is barred under Order 2 Rule 2 of CPC?OPD*
- 6. Whether the plaintiffs are estopped by their own act and conduct from claiming the partition of suit property?OPD*
- 7. Relief.”*

Both the parties led evidence in support of their respective cases.

The trial Court on the basis of preponderance of evidence and other material placed on record dismissed the suit of the plaintiffs and the findings were affirmed in appeal by the lower Appellate Court.

Learned counsel for the appellant submitted that the findings recorded by both the courts below are illegal and perverse and deserves to be set aside. Once the revenue record i.e Jamabandis for the year 1983-84 (Ex.P.1) and 1988-89 (Ex.P2), which were brought on record, proved the factum of jointness of the property, all the parties to the lis were joint owners. The defendants have miserably failed to prove the sale of the land by the plaintiffs and that the previous suit was only for mandatory injunction and permanent injunction while the present suit for partition was

filed only when the need in this respect arose later on.

On the other hand, learned counsel for the respondents supported the impugned judgments and decrees passed by the courts below stating that no interference is called for. He submitted that it has been proved on record that the plaintiffs had already sold the land and tried to take undue advantage of some wrong entry in the revenue record. He thus prayed for dismissal of the appeal.

After hearing learned counsel for the parties and appraising the paper book, I find that the present appeal is bereft of merit. It is not in dispute that the plaintiffs in the earlier round of litigation had preferred a suit for injunction against the defendants, which was decided by the learned Civil Judge (Jr. Divn.), Ludhiana vide judgment and decree dated 01.8.1996 (Ex.D2) while recording the findings that the plaintiff-appellant had got no share in the property in dispute, for, earlier she had disposed off all her share in khasra number in dispute. Appeal filed against the said judgment was also dismissed and therefore the decree attained finality. Once it has already been held that the plaintiffs were not in possession of the property much less owners, they could not agitate their claim with regard to the partition. All the facts, in my view, were rightly weighed in the minds of the courts below and therefore the findings do not call for any interference, much less no substantial question of law arises for determination.

Dismissed.

March 26, 2018
manoj

^(AMIT RAWAL)
JUDGE

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