

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1590 of 2013 (O&M)
Date of Decision : 19.11.2018

Mehal Singh and others

....Appellants

Versus

Santa Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Surinder Garg, Advocate
for the appellants.

None for respondents no. 1 to 48.

Ms. Anju Sharma Kaushik, DAG, Punjab
through Collector for respondent no. 49.

Surinder Gupta, J.

Plaintiffs-appellants filed suit seeking the relief of partition of *gair mumkin* land measuring 65 *kanals* 17 *marlas* situated in village Sadiq, *tehsil* and District Faridkot as per copy of *jamabandi* for the year 2005-2006.

2. Case of plaintiffs, in brief, is that they are co-sharers/co-owners of suit land with defendants (except State-respondent no. 49). Now a dispute has arisen between co-owners resulted in filing of this suit.

3. The suit was contested by defendants no. 1 to 9 with the plea that the same is not maintainable and also in view of earlier litigation between the parties, similar plea was also taken by defendants no. 34 to 37.

4. Pleadings of parties led to framing of the issues as follows:-

- (1) Whether plaintiffs and defendants are co-sharer/co-owners of the suit land, if so to what extent is the share of plaintiffs and defendants? OPP.
- (2) Whether parties have already partitioned whole of their land orally and are in separate possession of their respective share as alleged by defendants. If so its effect? OPD
- (3) Whether plaintiffs are entitled to get partition-suit land? OPP.
- (4) Whether suit is not maintainable in the present form? OPD
- (5) Whether suit of the plaintiffs is barred under Order II Rule 2 of CPC? OPD
- (6) Whether suit is liable to be stayed under section 10 of CPC? OPD
- (7) Whether suit is bad for partial partition? OPD
- (8) Whether suit has not been properly valued? OPD
- (9) Relief.

5. The evidence of plaintiffs was closed by order. Detailed facts to this effect have been incorporated in para 13 of the judgment passed by learned Ist Appellate Court, which are reproduced as follows:-

“13. As observed earlier, the suit was filed by the plaintiffs on 11.11.2007 and the learned trial Court issued the notice to the defendants. Service was over on 09.02.2010. Issues were framed on 21.04.2010 and

thereafter the learned trial Court granted three opportunities to the plaintiffs to lead evidence for 19.07.2010, 10.09.2010 and 16.10.2010, but the plaintiffs failed to examine any witness in this case and thereafter the learned trial Court gave the last opportunity to the plaintiffs for 15.12.2010 and because of failure of the plaintiffs to step into the witness box the evidence of the plaintiffs was rightly closed by order.....”

6. Learned counsel for appellants has argued that plaintiffs are claiming to be co-sharer in the suit property and their right stood defeated as evidence of plaintiffs was closed by order after giving three opportunities. The lapse on the part of plaintiffs can be rectified at this stage and the appellant could be burdened with costs.

7. Plaintiffs are claiming share in the immovable property. Though, there is lapse on their part that they did not produce evidence despite grant of three adjournments. Still to decide the matter on merit, I am of the opinion, that they can be allowed opportunity to lead evidence. Even otherwise, the question is to determine share of parties and their right to seek partition. Though, the judgment of Court below, if maintained, will bar the plaintiffs from seeking partition of their share in suit land but any of the respondents can file separate suit seeking partition of the property and right of plaintiffs will again be determined. The matter will again reopen and shall be decided on merit. For the lapse on the part of plaintiffs, they can be burdened with cost.

8. Keeping in view above facts, this appeal is allowed subject to deposit of costs of ₹10,000/- with Punjab and Haryana High Court Employees Welfare Association within a period of two weeks. Parties are directed to appear before the trial Court/successor Court on 10.12.2018. The trial Court will take up the file on board only on production of receipt of deposit of costs and proceed to decide the suit on merit after affording two opportunities to plaintiffs/appellants to lead their evidence.

November 19, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No