

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-4527-2016 (O&M)

Date of decision: September 21, 2018

Mohinder Singh (since deceased) through
his LRs and others

...Appellants

Versus

Dalbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate for the appellants.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of two courts below on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/appellants filed a suit for declaration against the defendant/respondents to the effect that they were owners/co-sharers with possession of the land measuring 55 Kanals 13 Marlas, situated in the revenue estate of village Gorkha, District Tarn Taran, and that mutation of inheritance of Atma Singh in favour of defendants No.1 to 10 was illegal, null and void. Plaintiffs averred that Mangat Singh, Mit Singh and Atma Singh sons of Jawala Singh were owners in possession of land measuring 84 Kanals 13 Marlas. They entered into an oral private partition, according to which land measuring 68 Kanals 01 Marlas fell to the share of Mangal Singh and Mit Singh. The land, which fell to the share of Mangal Singh and Mit Singh in the oral partition, was further

sold by them to Massa Singh son of Wazir Singh, father of plaintiffs, vide sale deed dated 12.8.1959. Possession of the same was also delivered to Massa Singh and mutation thereof was also sanctioned in his favour. It was pleaded that land given to Mangal Singh and Mit Singh was of low value, whereas land given to Atma Singh son of Jawala Singh was of higher value. Atma Singh died issueless and his estate was inherited by Mangal Singh and Mit Singh in equal share, but it was sanctioned after their death and thus, their heirs i.e. defendants No.1 to 10 stepped into the shoes of Mangal Singh and Mit Singh. Mutation of inheritance of Atma Singh was sanctioned in favour of defendants No.1 to 10 illegally, which was liable to be declared as null and void. The land measuring 68 Kanals 01 Marlas was inherited by the plaintiffs after the death of their father Massa Singh, out of which plaintiffs sold 12 Kanals 8 Marlas to Sardool Singh, Tarsem Singh and Jaswant Singh and after the said sale, 55 Kanals 13 Marlas remained in the share of the plaintiffs. Notice of the suit was issued to the defendants. Only defendants No.1, 9 and 10 contested, whereas remaining defendants were proceeded against ex-parte. The contesting defendants in their joint written statement admitted existence of the suit property, but denied the alleged private oral partition. They denied that land measuring 68 Kanals 01 Marlas had fallen to the share of Mangal Singh and Mit Singh. They pleaded that the alleged sale deed dated 12.8.1959 and mutation thereof were sham and fictitious documents. They averred that deceased Atma Singh during his life time had executed a registered Will dated 9.7.1983 in favour of his nephews namely, Dalbir Singh and Kashmir Singh. After hearing both the parties

and perusing oral as well as documentary evidence, the trial court dismissed the suit by observing that plaintiffs had failed to prove any oral partition and thus, they were not entitled to the relief of declaration that they were owners in possession of the suit property. Findings were affirmed by the lower appellate court.

I find no infirmity with the findings arrived at by both the courts below. It appears, no such partition took place between the co-sharers Mangal Singh, Mit Singh and Atma Singh, as plaintiffs had failed to adduce any evidence to prove the same. Even as per Jamabandis placed on record, shows that the suit land was joint between the parties. Only plea raised before this court is that judgments of two courts below are based on misappreciation of evidence as well as law. I find no substance in this plea. A perusal of concurrent findings of two courts below reveals that same suffer from no infirmity. No other substantial question of law has been urged.

Dismissed.

CM Nos.11764-C & 11765-C of 2016:

Since the main appeal has been dismissed on merits, these applications for condonation of delay do not survive and the same are also dismissed.

(RAJAN GUPTA)
JUDGE

September 21, 2018
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No