

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

**RSA No.5541 of 2016
Date of Decision:23.02.2018**

Surjit Singh

...Appellant

Versus

Jatinder Singh and another

...Respondents

RSA No.5542 of 2016

Surjit Singh

...Appellant

Versus

Jatinder Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.M.L.Saggar, Senior Advocate with
Mr.Armaan Saggar, Advocate for the appellant.
Mr.Prateek Sodhi, Advocate for the caveators-respondents.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, two appeals, arising out of consolidated judgment of both the courts below, while deciding two civil suits, are being disposed of.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below. Dispute in the present case is between the family members. At one point of time, Smt. Gurnam Kaur was the owner of the property. She executed a sale-deed on 14.3.1972 in favour of her son namely Amrik Singh. However,

unfortunately the aforesaid sale-deed was not mutated/entered in the revenue records.

Defendant in the suit, who is other son of Gurnam Kaur, pleaded right in the property on the basis of a registered Will dated 12.4.1982. First suit filed by the plaintiffs was instituted on 21.6.2006. The plaintiffs claim that they are owners of the property, which was at one point of time owned by Smt. Gurnam Kaur and thereafter sold to Amrik Singh. In the second suit, which was filed on 16.7.2008, the plaintiffs sought declaration that the orders of partitioning the property in spite of injunction granted by the civil court in the previous suit are illegal, null and void.

Defendants-appellant contested the suit and pleaded that the suit was barred by limitation. It was admitted that Gurnam Kaur was owner of 17/48th share in the joint khata. It was further pleaded that various sale-deeds were executed by Gurnam Kaur with respect to small plots in which Amrik Singh was either a witness or co-executant. Hence, it was pleaded that the sale-deed which has not been incorporated in the revenue record has lost its relevance.

The learned trial court, after appreciation of evidence available on the file, decreed both the suits filed by the plaintiffs. In one suit, declaration was granted that the plaintiffs are owners pursuant to the sale-deed dated 14.3.1972, whereas in the second suit, declaration was given that the partition proceedings were illegal, null and void.

Two first appeals were preferred. The learned first appellate court also, after re-appreciating the evidence available on the file, dismissed the appeals filed by the defendant.

It will be significant to note here that the defendant gave up his right under the registered Will dated 12.4.1982, as his counsel made a statement in the court on 19.9.2014. The learned trial court has also noticed this fact in the judgment passed by it. The counsel, representing the defendant-appellant, has also admitted this fact before the first appellate court. The appellant did not stake its claim on the basis of Will.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the impugned judgments and the record of the case.

Learned senior counsel for the appellant has submitted that in the partition proceedings, the plaintiffs were served, but they never chose to contest the partition proceedings. He has further submitted that once the partition proceedings have been allowed and possession has been delivered, the plaintiffs cannot claim any right over the land thereafter. He has further contended that the suit filed by the plaintiffs challenging the partition proceedings was not maintainable. He further submitted that the suit was barred under Section 34 of the Specific Relief Act.

On the other hand, learned counsel for the respondents has submitted that the plaintiffs were not served in the partition proceedings. He has further submitted that the plaintiffs filed a suit on 21.7.2006 when the partition proceedings were pending. Injunction was granted in favour of the plaintiffs, which was affirmed in the appeal. Still the revenue authorities proceeded with the partition proceedings, although title dispute was pending in the civil court. He has next submitted that the partition proceedings were concluded with the order of Financial Commissioner

passed in the year 2008. Immediately the plaintiffs filed the second suit. He further submitted that since the property between the parties is joint, therefore, everyone is deemed to be in possession of the property.

It is not in dispute that the partition proceedings were initiated on the basis of revenue record, which did not reflect the correct position. The sale-deed executed by Gurnam Kaur in favour of Amrik Singh, validity whereof has not been challenged any where, was not incorporated in the revenue record. The plaintiffs filed a suit on 21.7.2006. In the State of Punjab, partition proceedings of agricultural land, fall in the jurisdiction of the revenue authorities constituted under The Punjab Land Revenue Act, 1887 ('the Act' for short). Section 117 of the Act provides that if a question of title with respect to the property, which is sought to be partitioned, is raised or is involved, the Assistant Collector may either himself proceed to determine the question as a court or direct the parties to get it determined from the competent court. In the present case, question of title was involved, as the plaintiffs were claiming the property on the basis of a registered sale-deed, which has never been set at naught. Such being the position and the civil suit was pending, the revenue authorities ought to have stayed their hand from proceeding further in the partition proceedings however, for the reasons best known, proceedings continued.

In the considered opinion of this Court, any order passed by the revenue authorities, during the pendency of the suit in a partition proceeding, is ultimately subject to the decision of the civil court.

Still further, Smt.Gurnam Kaur had executed a registered sale-deed in favour of his son on 14.3.1972. The rights in land measuring

22 kanals and 6 marlas, which was subject matter of registered sale-deed, stood transferred in favour of Amrik Singh on the day the sale-deed was executed. Merely because the mutation of the sale-deed was not sanctioned in the revenue record, the rights of a vendee in the sale-deed and his successor would not evaporate. The sale-deed is a document of transfer of title, whereas mutation is only a fiscal entry for the purpose of updating the revenue record and collection of land revenue. Title is conferred by a registered sale-deed and not sanction of the mutation.

Next argument of the learned counsel is that the partition proceedings have been finalized and possession has been delivered. All these proceedings have been happened during the pendency of the suit. Hence finalization of the partition proceedings would not defeat the right of party, who is already before the civil court.

The civil court on appreciation of evidence has found that the plaintiff has a legal and valid title.

The further argument of the learned counsel is that the second suit is not maintainable under Section 158 of the Act. He submits that the orders passed by the revenue authorities cannot be challenged in the civil court. Section 158 of the Act deals with exclusion of jurisdiction of the civil court. Sub-Section (1) provides that the civil court shall not have the jurisdiction in any matter which the State government or the revenue officer is empowered by this Act to dispose of or to take cognizance of the matter. Sub section (2) of Section 158 provides that the civil court shall not exercise the jurisdiction over the matter fall therein. Clause (xviii) of sub-section (2) of Section 158 provides, which is relevant for the decision of this case,

reads as under:-

“(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land –revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy.”

Clause (xviii) provides that any question as to the allotment of the land on partition of an estate, holding or tenancy, or as to the distribution of the land subject etc. cannot be called in the question before the civil court. In the present case, as noticed earlier, Section 117 of the Act itself provides that whenever question of title is involved, the revenue officer may decline to grant the application of partition until the question has been determined by a competent court or he may himself proceed to decide the question as though he himself was a court. In the present case, the question of title was pending in the civil court. The plaintiffs were ex parte before the revenue authorities. Injunction in favour of the applicant was granted by the civil court. Once the question of title was pending, it was not proper for the revenue officers to ignore the order and proceed with the trial of the case.

Even the last submission of the learned counsel with regard to maintainability of the suit under Section 34 also does not have any substance. It is not in dispute that the parties are co-owners. In absence of any order of partition, all co-owners are deemed to be in possession of the property. The plaintiffs have pleaded that they are owners in possession of the property to the extent of 17/48th share. Both the courts, on appreciation

of evidence, has not recorded in finding that the plaintiffs are not in possession. Such being the position, the argument of the learned senior counsel for the appellant cannot be accepted.

No other argument was raised.

In view of what has been discussed hereinabove, this Court does not find any good ground to interfere in the concurrent findings of fact arrived at by both the courts below. Both the regular second appeals are dismissed. Pending application, if any, shall also stand disposed of.

23.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No