

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

1. RSA No.1838 of 2014 (O&M)
Date of decision : 23.07.2018

Jitender Kumar and another

...Appellants

Versus

Daya Ram and others

...Respondents

2. RSA No.3378 of 2014 (O&M)
Date of decision : 23.07.2018

Jitender Kumar and another

...Appellants

Versus

Daya Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for the appellants.

Mr. Divanshu Jain, Advocate for respondent Nos.1 to 5.

Mr. Sandeep Yadav, Advocate for respondent No.9.

Ms. Shifali Goyal, Advocate for
Mr. Kunal Mulwani, Advocate for respondent No.10.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment
is being released.

This judgment shall dispose of RSA Nos.1838 and 3378 of 2014. The trial Court as well as the First Appellate Court have disposed of both the suits and first appeals by a common judgment. Counsel for the parties are also agree that both the appeals can be disposed of together by a single judgment.

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Deen Dayal, the original plaintiff in both the suits has claimed that mutation No.11025 dated 22.12.2000, is illegal, null and void and liable to be set aside and the revenue entries are liable to be corrected. In the second suit, the prayer is for grant of permanent injunction.

FACTS

Ram Bhagat and Chander Bhan were the joint owners of the property comprised in Khewat Nos.415, 407 and 464 in equal share. Apart therefrom they are also owners of the land comprised in Khewat No.493 to the extent of 18 biswas. During the consolidation of holdings, an application was submitted by the families of Ram Bhagat and Chander Bhan for separating their share. Application Ex.P1 is duly signed by the parties. On the aforesaid application, the Officials of the Consolidation of Holdings entered an Resolution No.699 dated 17.12.2000 recording that the parties have requested for separation of their shares. On the basis thereof, the Consolidation Authorities who also have the powers of revenue official, during the consolidation of holdings, separated the shares of two families namely family of Ram Bhagat and family of Chander Bhan.

Deen Dayal, the plaintiff in both the suits is son of Ram Bhagat.

He filed two suits as noticed above. He challenged mutation No.11025 dated 22.12.2000 which was entered and sanctioned by the Officials on the basis of the application given by the parties and the Resolution passed by an Official of the Department of Consolidation of Holdings.

Both the Courts below after examining the evidence available on the file have dismissed the suits filed by the plaintiff.

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

Learned Senior Counsel appearing for the appellants has submitted that he is not challenging the findings of the Courts below with regard to the validity of mutation No.11025 dated 22.12.2000 which was sanctioned on the basis of the application dated 17.12.2000 filed by the parties before the Assistant Consolidation Officer and the Resolution No.699 passed by the Authorities. However, he submitted that the Authorities have wrongly further partitioned the land amongst the sons of Ram Bhagat, although, there was no request for that purpose. He submitted that as per provisions of the Punjab Land Revenue Act, 1887 (hereinafter to be referred as “the Act of 1887”), only two modes have been prescribed for partitioning the agricultural land. While drawing the attention of the Court to the provisions of Chapter IX of the the Act of 1887, it has been contended that the partition of the agricultural land can only be carried out either by filing an application for partition under Section 111 of the Act of 1887 or affirmation of the partition privately effected as provided under Section 123 of the Act of 1887. He submitted that on careful reading of the

application Ex.P1 and the Resolution Ex.P6, or mutation No.11025, it is apparent that there was no request for affirmation of the partition privately effected in between the legal heirs of Ram Bhagat and hence action of the Officials was illegal.

On the other hand, learned counsel for the respondents have pointed out that the admission is the best piece of evidence and in the present case, two sons of the plaintiff who have appeared as PW5 i.e. Mann Singh and PW6 i.e. Gajender Singh have admitted that even inter se amongst the heirs of Ram Bhagat, there was mutual partition. It has further been stated by the aforesaid two witnesses who are sons of the original plaintiff has stated that the property which has fallen to their share after the death of Deen Dayal, have also been partitioned. Learned counsel has further drawn the attention of the Court to the evidence of DW4-Prem Chand, President of the Municipal Council, Narnaul and statement of DW5, Shiv Kumar, Kanungo who have also supported the case of the defendants. The defendants have also examined Patwari from the Canal Department who have also stated that all the legal heirs of Ram Bhagat had divided the property amongst themselves and are in separate possession.

The arguments of the learned counsel for the appellants that only two modes are prescribed for partitioning the agricultural land appears to be attractive on first impression, however on the close scrutiny of the language enshrined in Section 123 of the Act of 1887, it is apparent that the affirmation of the partition privately effected is not mandatory. The word as used in the statutory provision is “may”. Section 123 of the Act of 1887 is extracted as under:-

“123. Affirmation of partition privately effected: -(1) In any case in which a partition has been made without the intervention of a Revenue-officer, and party thereto may apply to a Revenue-officer for an order affirming the partition.

(2) On receiving the application, the Revenue-officer shall inquire into the case, and, if he finds that the partition has in fact been made, he may make an order affirming it and proceed under section 119, 120, 121 and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter.”

It is open to the parties to get the partition privately effected, affirmed from the Revenue Officer. However, such provision does not make it mandatory for the joint owners to get the affirmation of the partition privately effected, affirmed from the Revenue Officer before their status as a joint owners comes to an end. The partition privately effected can be gathered from the evidence which is available on the file. Reliance in this context can be made to the judgment in the case of Ajmer Singh Vs. Dharam Singh, (2006) 2 RCR (Civil) 541.

In the present case, the overwhelming evidence of the private partition is available on the file. As noticed earlier, two sons of the plaintiff have themselves stated that the partition was privately effected between the legal heirs of Ram Bhagat and further private partition has also been effected in between the legal heirs of Deen Dayal, after his death. Apart therefrom, the defendants have also produced sufficient evidence to prove that fact.

In view of the aforesaid discussion, this Court does not find any

good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No