

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

**R.S.A No.1773 of 2018(O&M)
Date of decision:11.09.2018**

Arshdeep Singh and another

..... Appellants

Versus

Pardamman Singh and others

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. K.B.S.Mann, Advocate
for the applicant-appellants.

LISA GILL,J

CM-4826-C of 2018.

Heard.

Keeping in view the averments in the application as well as arguments addressed, delay of 139 days in re-filing of this appeal is condoned.

Application is disposed of.

RSA No.1773 of 2018.

Appellant-defendants are aggrieved of judgment and decree dated 26.04.2017 passed by the learned Additional District Judge, Bathinda, as well as judgement and decree dated 04.01.2016, passed by the learned Addl. Civil Judge (Sr. Division), Phul, whereby the suit filed

by the plaintiff-respondents has been decreed.

Brief facts necessary for the adjudication of the case are that respondent-plaintiffs no.1 and 2, Pardamman Singh and Sukhsham Singh sons of Balvir Singh filed a suit for possession by way of partition of '*gair mumkin*' land measuring 6 kanal 9 Marlas as per jamabandi for the year 2007-08, according to their share as described in the plaint. Plaintiff-respondents no.1 and 2 pleaded that they were co-sharers in joint possession of the land to the extent of 2/30 share out of the total land measuring 6 kanal 9 Marlas alongwith defendants (appellants Arshdeep Singh and Kuldeep Singh sons of Rajinder Singh) besides respondents no.3 to 7 in this appeal. It was submitted that Mit Singh, one of the co-sharer had died. Defendants no.1 and 2, Iqbal Singh and Bhupinder Singh (respondents no.3 and 4 in this appeal) are the legal heirs of Mit Singh. The plaintiffs stated that they wished to separate their share as they were not deriving any benefit from the property while it was joint. Dispute between parties used to remain, therefore they wanted to separate their share, but the defendants refused. Hence, the suit was filed.

The suit was resisted by the defendants no.4 and 5, Balwinder Singh and Harbhajan Singh (appellants in the present appeal). Remaining defendants did not appear to contest the suit. They were proceeded against *ex parte*. Written statement was filed by the appellants while taking various preliminary objections. Averments on merits were controverted. It was stated that the plaintiffs had concealed the true and material facts from the Court. Proper parties were not arrayed. Property in question, it was stated was not joint. Father of the plaintiffs and father of

the defendants i.e. Balwinder Singh and Jeet Singh had partitioned the property about 30 years back by way of oral/khangi partition. Therefore, all sons of Karnail Singh (father of the plaintiffs) had constructed their separate house over the suit property which had fallen to their share. They were in exclusive possession of the same. After the death of Rajinder Singh and Jeet Singh, defendants along with Balbir Singh and Harbhajan Singh were also in exclusive possession of the property on which they too had constructed their houses. Therefore, the property did not remain joint in any manner. It was further pleaded that Mit Singh had died. He was not a co-sharer in the suit property. All his legal heirs were not impleaded in the suit. There was no question of partition as all the parties were in separate possession of their respective shares. Dismissal of the suit was prayed.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the relief of possession as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Whether plaintiff is estopped by his own act and conduct from filing the present suit?OPD
5. Whether the plaintiff has concealed the material facts from the Court?OPD
6. Whether the suit is bad for non-joinder of necessary parties?OPD
7. Whether the plaintiff has not included the entire gair mumkin abadi area of the entire land belonging to the parties?OPD
8. Relief.

Both the parties led evidence in support of their respective

claims.

Learned trial Court on considering the facts and circumstances of the case allowed the suit of the plaintiffs and a preliminary decree was passed in favour of the plaintiffs.

Appeal filed by the present appellants was also dismissed by the learned Additional District Judge, Bathinda, vide impugned judgement and decree dated 26.04.2017.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants argues that both the learned Courts below have erred in decreeing the suit for partition filed by the plaintiffs. Once, it is admitted by the plaintiffs that all the co-sharers were in independent possession of the property since the last 30 years, there was no question of allowing the suit of the plaintiff. All the co-sharers are in separate possession of the property in terms of their shares. Oral partition had been effected by the respective fathers of the present appellants and respondents. Moreover, the plaintiff-respondents sought partial partition which is not permissible. It is thus prayed that the present appeal be allowed and impugned judgements and decrees be set aside consequently dismissing the suit filed by respondents no.1 and 2.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

As per jamabandi for the year 2007-08 (Ex.P-1), property in question is reflected to be joint between the parties. No partition is reflected to have taken place. Therefore, it is rightly held by both the learned Courts below that plea of the present appellants that the property

in question was partitioned about 30 years ago, is not substantiated. The mere fact that possession of a particular parcel of land is with one or the other co-sharer does not lead to a conclusion that partition by metes and bounds has indeed been effected. There is no such evidence on record to reflect partition of the property by metes and bounds. It is specifically mentioned in jamabandi Ex.P-1 that the property in dispute is joint between the parties and in the column of cultivation, the entry is '*Makbuja Malkan*'.

Learned Additional District Judge, Bathinda has rightly relied upon the various judgements cited in the impugned judgement and decree dated 26.04.2017. Furthermore, argument that the plaintiffs sought partial partition has been rightly negated. It is borne out from the record i.e. Jamabandies Ex.P-1, Ex.D-2 and Ex.D-3 that the co-sharers in the other properties referred to by the appellants are not common. It is rightly held by the learned trial Court that the property in dispute falls in khewat no. 420/499, in which all the parties to the *lis* are the co-sharers, whereas in khewat no. 440/406, 406 and khewat no. 413/520, apart from the parties to the *lis*, there are other co-sharers who are not parties to the present suit.

Learned counsel for the appellant-defendants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 04.01.2016 and 26.04.2017 passed by the learned Addl. Civil Judge (Sr. Division) Phul and learned Additional District Judge, Bathinda, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

11.09.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No