

DIWAKER GULATI
2018.09.18 11:25

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

RSA No.1921 of 2018(O&M)

Date of decision: 4.9.2018

Ram Kanwar and another

....Appellants

VERSUS

Smt. Hoshiari and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Chanderhas Yadav, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration and consequential relief of injunction was dismissed by the trial Court vide judgment and decree dated 14.11.2014 and the appeal preferred by unsuccessful appellants/plaintiffs did not find favour with the District Judge, Jhajjar whereby findings recorded by the trial Court have been affirmed without variance.

The appellants/plaintiffs, successors in interest of Jage Ram son of Sh. Ghisu have claimed ownership in possession of land measuring 32 kanal 17 marlas by challenging the partition proceedings as well as mutation No.3647 sanctioned on the basis of said partition. It is averred that Sh. Jage Ram and grandfather of defendants No.2 to 4 and grandfather in law of defendant No.1 had been joint owners in equal share of land detailed in para 2 of the judgment of the trial Court measuring 32 kanal 17 marlas, situated in village Badli, Tehsil Bahadurgarh, District

Jhajjar. Jage Ram was also mortgagee of half share of land bearing killa No.147/8/2 (1-7), $\frac{1}{12}$ th share in killa No.147/8/3 (0-5) measuring 1 kanal 12 marlas which was later purchased by him to the extent of land mortgaged in his favour. Jage Ram was also owner in possession of half share in killa No.147/9 (7-7) and $\frac{1}{12}$ th share in killa no.98/20/1 (0-8) total measuring 8 kanal 15 marlas. It is further averred that the aforesaid land was partitioned by mutual consent of all the co-sharers in the year 1994 and in the partition, land bearing Killa no.108/2/1 (5-0), $\frac{2}{4}$ (0-15), $\frac{2}{2}$ (2-0), 245/13/2 (3-7), 18/1 (4-17), 136 (0-2) measuring 16 kanal 1 marla was allotted to father of the plaintiff which also included the land purchased by him separately. Jage Ram had $\frac{1}{2}$ share in ancestral land measuring 16 kanal 8 marlas apart from land measuring 7 kanal 15 marlas purchased by him. It is further averred that though the partition was reduced in writing, incorporated in the revenue record and mutation No.36401B has been sanctioned but same is the result of conspiracy hatched by the defendants at the back of father of the plaintiffs and they (defendants) got more share in the land in dispute. The plaintiffs neither gave their consent to partition nor were present at the time of partition.

Counsel for the appellants would urge that document Ex.P10 and entry in the roznamcha waqaiti is purported to be thumb marked by Sh. Jage Ram, sufficient to prove that he was illiterate. No evidence has been led by the respondents that Ex.P10 was read over to Sh. Jage Ram and he thumb marked the same after admitting its contents to be correct. It is further argued that by taking advantage of illiteracy of Sh. Jage ram, land purchased by him was also included in the partition proceedings and Sh. Jage Ram was allotted land measuring 16 kanal 1 marla as against his entitlement out of ancestral land plus land measuring 7 kanal 15 marlas

purchased by him. It is argued with vehemence that the Courts have committed a serious error rather perversity by rejecting plea of the appellants.

Counsel for the appellants, in response to a query, is not in a position to inform the year in which Sh. Jage Ram passed away. However, he has fairly conceded that Sh. Jage Ram remained alive for quite some time after the proceedings with regard to partition in the year 1994 were carried into effect in the revenue record by way of entry in roznamcha waqaiti on 05.05.1994 and mutation sanctioned on the basis thereof. It is not plea of the appellant that Sh. Jage Ram was not aware of the partition proceedings or the roznamcha waqaiti does not bear thumb impression of Jage Ram or that defendants/respondents obtained thumb impressions of an imposter of Sh. Jage Ram. If Sh. Jage Ram knowing fully well about the partition proceedings did not raise an objection with regard to the share allotted to him, the successors in interest of Sh. Jage Ram cannot be heard to say that proceedings of partition are the result of conspiracy hatched by the defendants at the back of Sh. Jage Ram. There is no evidence on record that suit land measuring 32 kanal 17 marlas was Joint Hindu Family Coparcenary Property in the hands of Sh. Jage Ram in order to entitle the appellants/plaintiffs to raise an issue that they were required to be involved in the partition proceedings. The mere fact that Sh. Jage Ram affixed his thumb impression on roznamcha waqaiti ipso facto does not lead to a conclusion that the partition proceedings are the result of misrepresentation or fraud, required to be proved akin to a criminal charge. In this view of the matter, I do not find any reason to interfere in the consistent findings recorded by the Courts when otherwise the regular second appeal can be

admitted for hearing if findings of the Courts suffer from perversity or raise a question of law.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

SEPTEMBER 4, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no