

**In the High Court for the States of Punjab and Haryana
at Chandigarh**

**RSA No.3157 of 2018 (O&M)
Date of Decision:- 23.05.2018**

Hawa Singh and others

.....Appellants

Versus

Pardeep and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Saurabh Arora, Advocate, for the appellants.

GURVINDER SINGH GILL, J.

By way of filing this appeal the appellant assails judgment and decree dated 8.3.2018 passed by the Court of learned Additional District Judge, Charkhi Dadri whereby the appeal filed by the present appellant has been dismissed and judgment and decree of the lower Court has been upheld.

The respondent-plaintiff Pardeep had filed a civil suit for declaration to the effect that order dated 4.3.2011 passed by Assistant Collector, IInd Grade, Charkhi Dadri pertaining to partition of the suit land and the subsequent revenue entries, effected on the basis of the said order were illegal, null and void mainly on the ground that the said proceedings had been conducted at his back. The suit was resisted by the appellant-defendants wherein the main contention was that the respondent-plaintiff had been duly served and that in fact after his service he had also associated in the partition proceedings and had affixed his signatures in zimni order dated 26.2.2010.

The learned lower Court on appraisal of the evidence on record held that the respondent-plaintiff had not been served in the partition proceedings and that his alleged signatures on zimni order dated 26.2.2010 are forged and consequently decreed the suit, while setting aside the order dated 4.3.2011 and the consequent entries recorded on the basis of the said order.

Upon appeal, filed by the defendant-appellants, the findings of the learned lower Court were affirmed by learned lower Appellate Court vide judgment dated 8.3.2018 which has been challenged by way of filing the present appeal.

Learned counsel for the appellant while assailing the impugned judgment has submitted that apart from the respondent-plaintiff, the remaining co-owners who are closely related to the respondent-plaintiff had also been duly served and that in these circumstances the respondent-plaintiff could not feign ignorance about the partition proceedings. It has further been submitted that in fact, a civil suit challenging the impugned order was not maintainable in view of provisions of Section 158 of the Punjab Land Revenue Act, 1887 and that the appropriate remedy available to the respondent-plaintiff was to file appeal before the Collector.

I have heard learned counsel for the appellant and have perused the impugned judgment. I find that in the present case several other co-owners are stated to have refused to accept summons. The learned lower Appellate Court had noticed the fact that Sanjay, Sandeep, Kuldeep and Smt. Satyawati were not duly served and it had been reported that they had refused to accept summons. Interestingly, the said summons were signed by none else but present appellant-Hawa Singh as a witness which casts serious doubt regarding the veracity of the said report of “refusal”. I further find that the

plaintiff had got his signatures on zimni order dated 26.2.2010 examined from a hand writing expert who filed his report Ex.PW-3/A wherein it has been categorically opined that the signatures have been forged. There is no evidence to rebut the aforesaid opinion of the expert. In these circumstances, I do not find any reason to discard the same.

As regards the contention of learned counsel for the defendant-appellant that the suit was not maintainable in view of the provision of Section 158 of the Punjab Land Revenue Act, 1887 I do find that there is a bar under the said provisions but the said bar cannot be invoked in the present case as apart from there being a procedural defect where there is no service, it is a case of forgery pertaining to the service of summons and to which the Court cannot shut its eyes. As such, the aforesaid contention is devoid of merits and cannot be accepted.

In view of the aforesaid discussion, I do not find any infirmity in the impugned judgment and the same is upheld.

Finding no merit in the present appeal, the same is hereby dismissed.

May 23, 2018
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No