

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

RSA No.4002 of 2018 (O&M)
Date of Decision : 19.07.2018.

Lakhi Ram

... Appellant

VERSUS

Sawat Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ravinder Rana, Advocate for the appellant.

B.S.WALIA, J. (ORAL)

1. Regular Second Appeal has been filed by the defendant against the judgment and decree of the learned lower Appellate Court dated 05.04.2018, reversing the judgment and decree dated 26.08.2016, passed by the learned Civil Judge (Junior Division), Jhajjar, in Civil Suit No.62 of 2015 who had dismissed the suit inter-alia on ground of the same being premature.

2. Brief facts of the case are that the Respondent/plaintiff had filed a civil suit for specific performance of agreement to sell dated 04.07.1998. The agreement to sell contained a clause that the land would be transferred in the name of the respondent/plaintiff on finalization of the partition proceedings of the land in question pending between the co-sharers and the appellant -defendant.

3. The learned Civil Judge (Junior Division), Jhajjar held the suit to be premature on the ground that partition of the property had not taken place, therefore, no cause of action had arisen in favour of the respondent-plaintiff.

4. The judgment and decree passed by the learned Civil Judge (Junior Division), Jhajjar that without fulfilling the condition precedent in the agreement to sell Ex.P1, the suit of the plaintiff was premature / not maintainable was reversed by the learned District Judge, Jhajjar, vide judgment and decree dated 05.04.2018.

5. The learned lower Appellate Court held that as per agreement Ex.P1, it was clear that partition proceedings for separation of share of the appellant-defendant from the joint land detailed and described in jamabandi for the year 2004-05 were in progress, there was no stay in the partition proceedings qua alienation of the share of the appellant-defendant, besides, it was not the case of the appellant-defendant that he was not the owner of the land agreed to be sold to the respondent-plaintiff or that his share was deficient in any manner. In the aforementioned background, the learned lower Appellate Court held that there was nothing on record to suggest that on the date of agreement to sell Ex.P1 and even on the date of hearing of the appeal, the appellant-defendant was incompetent to sell his share in the joint land without getting his share separated from the joint holding and the condition of partition of share of the appellant-defendant incorporated in the agreement to sell Ex.P1 was inserted by the parties merely for purpose of convenience in transferring the land and the said clause could not be used as a pretext for defeating the agreement to sell Ex.P1.

6. The learned lower Appellate Court also observed that order dated 31.08.2001 (Ex.P5), passed by the Assistant Collector 1st Grade, Jhajjar, preparing *Sanad Takseem*, under Section 121 of the Punjab Land Revenue Act, 1887 in the partition proceedings initiated by the defendant, mentioned

that the *Sanad Takseem* would be implemented after the crop was harvested. The learned lower Appellate Court rejected the contention of the appellant-defendant that the respondent-plaintiff had knowledge of Ex.P6 dated 13.08.2003, but remained silent for a long time therefore was not ready and willing to perform his part of the contract or that as on date of filing of the civil suit i.e. 20.09.2011 the same was barred by limitation because partition had taken place and only implementation of the same remained to be effected and as per agreement Ex.P1, the appellant-defendant was required to give one month notice to the respondent-plaintiff but did not do so. Therefore it did not lie in the mouth of the appellant-defendant that the suit of the respondent-plaintiff was hit by limitation. The learned lower Appellate Court held that the appellant-defendant deliberately avoided giving notice to the respondent-plaintiff as he intended to avoid agreement Ex.P1 therefore took up the stand that he had not executed agreement to sell Ex.P1. In the aforementioned background, the learned lower Appellate Court held that the suit was within limitation as after having come to know about the partition proceedings, the respondent-plaintiff filed the suit.

7. I have considered the submissions of learned counsel for the appellant and in the light of the position as noted above I am of the view that no case is made out warranting interference with the well reasoned findings recorded by the learned lower Appellate Court. No substantial question of law arises for determination in this case. Admittedly, the *Sanad Takseem* was sanctioned in favour of the appellant-defendant and other co-sharers. As per agreement to sell Ex.P1 dated 04.07.1998, the appellant-

defendant was required to give one month notice to the respondent-plaintiff for execution of the sale deed. As per order Ex.P5 dated 31.08.2001, passed by the Assistant Collector 1st Grade, Jhajjar, *Sanad Takseem* as provided under Section 121 of the Act was prepared in the partition proceedings initiated by the appellant-defendant for separation of his share in the joint land. Ex.P5 also records that the *Sanad Takseem* would be implemented after the crop was harvested. As per decision of this Court in Amrik Singh vs. Karaj Singh and others 2009(2) Latest Judicial Reports, 554, as well as in Raja Ram alias Rajender vs. Tehsildar-cum-Assistant Collector, 2001(2) RCR(C) 739, "the law does not provide appeal against order under Section 121 of the Act through which Revenue Officer prepares instrument of partition after partition proceedings have been completed" Likewise, as per decision of this court in Ranbir Singh vs. Financial Commissioner Haryana 2005(3) PLR 519 'The Punjab Land Revenue Act, 1887 does not provide any remedy against the final order of partition which is concluded by drawing up of the *Sanad Takseem*.' It is apparent that the partition proceedings had already been concluded and only implementation in respect thereto remained to be effected in favour of the appellant-defendant and other co-sharers in the revenue record. The appellant-defendant did not give notice of one month as contemplated in the agreement to sell dated 04.07.1998, Ex.P1, instead chose to maintain a low profile resulting in the partition proceedings being consigned to the record for want of prosecution. The findings recorded by the learned civil judge that agreement dated 04.07.1998 was executed by the appellant- defendant in favour of the respondent-plaintiff were not challenged by the appellant-

defendant by filing any cross appeal and the respondent-plaintiff filed the civil suit on coming to know about the partition proceedings. In the circumstances, the civil suit filed by the respondent-plaintiff cannot be said to be barred by limitation.

8. Resultantly, there is no ground warranting interference with the judgment and decree passed by the learned lower Appellate Court. Accordingly, the appeal is dismissed in *limine*.

(B.S.WALIA)
JUDGE

19.07.2018.
rajesh.k.khurana

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