

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

RSA No.4719 of 2017 (O&M)

Date of decision: 23.02.2018

Subhash

... Appellant

Versus

Ranbir Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.K. Singla, Advocate
for the appellant.

REKHA MITTAL, J. (Oral)

Subhash, unsuccessful plaintiff has filed the regular second appeal to assail consistent findings recorded by the Courts below, rejecting his claim qua share in vacant land of Abadi deh on the basis of his father being owner (proprietor) of land measuring 104 kanals 16 marlas, detailed in para 1 (unnumbered) of the judgment passed by the trial Court situated in village Gangesar, Teshil Gohana, District Sonipat.

Some proprietors of village Gangesar filed Civil Suit No.208 of 1990 before the Court at Gohana for partition of vacant land of abadi deh of village Gangesar in which preliminary decree dated 18.03.1991 was passed whereby it was ordered that abadi deh land comprised in Khasras No.80, 81 measuring 619 Kanals 5 Marlas be partitioned amongst proprietors of the village on the principle of Hasab Rasad Khewat. Land in

possession of non-proprietors was excluded from partition and jamabandi for the year 1992-93 was made basis by the Local Commissioner for preparing final decree. After adjudicating objections of various proprietors, final judgment and decree was passed on 25.01.2003. It is averred by the plaintiff that his father and proforma defendants No.7 to 9 sold agricultural land measuring 42 Kanals to defendants No.1 and 2. His father also sold agricultural land measuring 24 Kanals to defendants No.3 and 4 in equal share. He also sold agricultural land measuring 29 Kanals to defendants No.5 and 6 in equal share but without Haq Shamlat as per jamabandi for the year 1992-93. Earlier Local Commissioner allotted 3295 sq. yards plot to his father and defendants No.7 to 9 at Sr. No.27 bearing plot No.297 but later defendants No.1 to 6 filed objections in the Court on 14.12.1994 without impleading proper and necessary parties. It has been alleged that without giving an opportunity to him and proforma defendants No.7 to 9 i.e. legal heirs of Budh Ram, the Court ordered to allot 2375 sq. yards land to defendants No.1 to 6 which is illegal and not binding upon rights of the plaintiff and proforma defendants.

The Trial Court has held that Budh Ram, father of plaintiff and defendants No.7 to 9 ought to have filed an appeal or revision against order dated 09.04.2002 but he did not prefer to do so. Plaintiff being son of Budh Ram could have filed appeal or revision against order dated 09.04.2002 vide which objections of defendants No.1 to 6 were allowed but even he or proforma defendants did not adopt that course.

The Court in appeal in para 21 of the judgment would say that Budh Ram, predecessor in interest of the plaintiff by necessary implication was party to the suit by virtue of Order 1 Rule 8 of the Code of Civil Procedure (in short 'CPC'), so plea cannot be raised by the plaintiff that the orders were passed at his back. Judgment and decree passed under Order 1 Rule 8 CPC binds not only those who were arrayed in the suit but entire community of the locality as has been held in **Kaluta and others Vs. M/s. Greater Ashoka Land and Development Company, 2006(1) RCR (Civil) 521**. It has further been held that though plaintiff is right that his father had not sold his share in the shamlat land but he has rightly been non-suited by the learned trial Court.

Counsel for the appellant is not in a position to challenge the aforesaid findings recorded by the Courts that Budh Ram is deemed to be a party to the partition proceedings initiated by proprietors of the village under Order 1 Rule 8 CPC, therefore, order passed by the Court accepting objections of the purchasers of land from Budh Ram was required to be challenged by Budh Ram or his successors-in-interest by taking recourse to appropriate remedy in law but they cannot maintain an independent suit for the purpose. Counsel has fairly informed that preposition of law accepted by the Court in appeal is squarely covered by the judgment in **Kaluta's case** (supra) that Sh. Budh Ram, predecessor-in-interest of the plaintiff is deemed to be a party to the suit filed under Order 1 Rule 8 CPC, by way of necessary implication.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

23.02.2018

ashok

(REKHA MITTAL)
JUDGE

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