

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

RSA No.4729 of 2017 (O&M)

Date of decision: 26.03.2018

Gurdial Singh (now deceased) through LRs and others

.....Appellant

Versus

Smt. Gurdial Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.V.S. Chugh, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.12584-C of 2017

For the reasons mentioned in the application, same is allowed and
delay of 1013 days in filing of the appeal is condoned.

CM No.12585-C of 2017

Application is for impleading the LR's of Harnek Singh-
respondent No.22 and Gurdial Kaur-respondent No.11 (i).

In view of the averments mentioned in the application, LR's of
deceased Harnek Singh and Gurdial Kaur are impleaded as party
respondents in the present appeal, subject to all just exceptions.

Misc. application stands allowed accordingly.

RSA No.4729 of 2017

This appeal has been filed against the judgment dated 11.04.2014

passed by the Additional District Judge, Bathinda, dismissing an appeal filed by plaintiffs-appellants against the judgment and decree dated 15.09.2010 passed by the Civil Judge (Junior Division), Talwandi Sabo, whereby suit filed by plaintiffs-appellants for declaration and permanent injunction, has been dismissed.

Plaintiff (appellants herein) filed the aforementioned suit alleging that they (plaintiffs) and defendants are co-sharers in the suit land. Plaintiffs and defendant Nos. 41 to 47 are in possession of the suit land being mortgagees, besides being co-sharers. Their forefathers got the suit land on mortgage from one Beehla Singh son of Chanan Singh for a mortgage consideration of Rs.1020/- and took possession thereof on 1 Harh, Samat 1980 vide rapat Rojnamcha No.385. Mutation, in this regard, was also sanctioned in the name of Wariam Singh to the extent of half share and Uggar Singh and Suba Singh to the extent of other half share. Mutation No.689 was also sanctioned. After the death of their forefathers, revenue entries were changed in the names of the plaintiffs and defendant Nos.41 to 47. It was alleged that defendant No.1, in connivance with defendant Nos.2 to 8 filed an application for partition of the suit land along with some other parties before the revenue court on 18.04.2002, whereupon partition of the suit land was ordered by the A.C. Ist Grade, Talwandi Sabo, who issued the Sanad Takseem on 06.01.2005. Those partition proceedings were made at the back of the plaintiffs and defendant Nos.41 to 47 without notice to them. Plaintiffs were not given their share in the suit land as per said partition. Hence, the suit.

Upon notice, defendant Nos.1, 2, 7 to 10 filed written statement,

wherein it was stated that the suit of the plaintiffs was based on wrong

entries in the jamabandies. No proof had been brought on record to show that plaintiffs and defendant Nos.41 to 47 were mortgagees of the suit land nor the date/amount of alleged mortgage was mentioned. It was denied that the predecessors or defendants ever mortgaged any land to the predecessors of the plaintiffs and defendant Nos.41 to 47. It was denied that plaintiffs and defendant Nos.41 to 47 are co-sharers or mortgagees of the suit land. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are co-sharers of land measuring 37 kanals 9 marlas? OPP
2. Whether the plaintiffs and defendant Nos.41 to 47 are mortgagees of the suit land and are in possession of the same? OPP
3. Whether the plaintiffs have become owners along with defendant Nos.41 to 47 of the suit land by the efflux of time? OPP
4. Whether the partition order dated 16.11.2004 and 06.01.2005 are illegal, null and void and are not binding upon the rights of the plaintiffs? OPP
5. Whether the defendant Nos.1 to 8 are threatening to alienate the suit land and are threatening to dispossess the plaintiffs and defendant Nos.41 to 47, if so, its effect? OPP
6. Whether the suit of the plaintiffs is maintainable in the present form? OPP
7. Whether the plaintiffs have suppressed the material facts from the Court? OPD
8. Whether the suit of the plaintiffs is bad for non joinder of necessary parties? OPD
9. Whether the plaintiffs are estopped by their own act and

conduct from filing the suit? OPD

10. Whether the suit of the plaintiffs is within limitation? OPP

11. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts below have returned a concurrent finding of fact that plaintiffs were parties to the application (Mark-A) for partition, which shows that they were parties before the Assistant Collector, Ist Grade, Talwandi Sabo. The said partition was effected vide orders dated 16.11.2004 and 06.01.2005. Thereafter, Sanad Takseem Ex.P18 was prepared, which showed that instrument of partition had already been prepared. Once, the partition proceedings have been finalized, they no more remained co-sharers in the suit property. With these observations, the suit of plaintiff-appellant has been dismissed.

After going through the impugned judgments, it is apparent that plaintiffs-appellants have failed to prove their case. Partition proceedings have already been finalized and sanad takseem has been prepared. Plaintiffs-appellants did not challenge the sanad takseem and partition proceedings under Article 226/227 of the Constitution of India. Moreover, they did not place on record any mortgage deed to claim that they were mortgagees. After the partition proceedings, they had lost the character of co-sharers. In the absence of any cogent and convincing evidence, the suit of the plaintiffs has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in

the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

26.03.2018
ajp

(RITU BAHRI)
JUDGE

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