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

RSA-1944-1988 (O&M)

Date of decision : 08.05.2019

Kapur Singh and others

... Appellants

Versus

Parduman Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ankita Midha, Advocate for the appellant.

Mr. Ritesh Aggarwal, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the respondents-plaintiffs for possession of land measuring 13 kanals 2 marlas, has been decreed by setting aside the judgment and decree of the trial Court, dismissing the suit.

The plaintiffs sought the possession of the suit land measuring 13 kanals 2 marlas bearing Khasra No.9R/14, 17/1, 18/1, Khewat No.68, Khatauni No.143 as per jamabandi for the year 1980-81 situated in Village Kot Karam Chand, Tehsil Batala, on the premise that the land originally belonged to Ujjagar Singh son of Mangal Singh and after his death in the year 1971, the property was inherited by nine heirs i.e. Parkash Kaur his widow (since deceased), his four sons, defendant Nos.8 to 10 and Kashmir Singh, deceased (predecessor-in-interest of plaintiff Nos.1 to 6 and

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defendant Nos.12 to 14) and four daughters i.e. plaintiff Nos.7 to 9 and defendant No.15. On death of Parkash Kaur, her 1/9th share devolved upon eight heirs of Ujjagar Singh, therefore, the plaintiffs were entitled 1/8th share each. Plaintiff No.6, being minor, filed the through mother.

Only defendant Nos.1, 3, 4, 6 and 7, contested the suit and denied all the averments in the plaint and alleged that the suit land was jointly owned and possessed by co-sharers and the land, in dispute, was exchanged by Mula Singh, Ujjagar Singh, Hazara Singh, Kapur Singh sons of Khushal Singh, in lieu of the land given in exchange measuring 15 kanals 4 marlas bearing Khasra No.15R, 17, 18R/4, which was given to Kashmir Singh, Lakhbir Singh, Dalbir Singh, Kulwant Singh sons of Ujjagar Singh and Parkash Kaur, vide two exchange deeds dated 28th & 30th September 1974. On demise of Ujjagar Singh son of Khushal Singh, defendant Nos.5 to 7 inherited the property, on the basis of the registered Will dated 09.03.1981. After the exchange of the land, out of the entire holdings, defendant Nos.1 to 7 constructed the Haveli, pucca residential house and installed the tube-well. Kashmir Singh and others, attempted to interfere in the possession, resulting into, a suit for injunction, which was decreed on 02.03.1985 and the said decree had become final.

Since the parties were at variance, the trial Court framed as many as ten issues including the issue of relief.

The plaintiffs, in support of the case, examined one witness and brought on record mutation (Ex.P1) and jamabandis for the year 1970-71 (Ex.P2) and for the year 1975-76 (Ex.P3). On the other hand, the defendants examined five witnesses and brought on record umpteen number of documents.

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The trial Court, noticing all the facts, dismissed the suit by holding that since the parties were co-sharers, the remedy of partition was available. However, the lower Appellate Court, despite noticing the aforementioned facts, decreed the suit.

Mr. Ankit Midha, learned counsel appealing on behalf of the appellants-defendants submitted that the documentary evidence of plaintiffs Ex.P1, Ex.P2 and Ex.P3, revealed the co-ownership of the parties and even Ex.D4, jamabandi for the year 1980-81. Even if, exchange deed, propounded by the defendants, was disbelieved. Khasra girdawaris also reflected the possession, in that regard and injunction was granted only noticing the exclusive possession, thus, urges this Court for setting aside the judgment and decree, under challenge.

Per contra, Mr. Ritesh Aggarwal, learned counsel appearing on behalf of respondent No.1/plaintiff submitted that there is no illegality and perversity in the judgment and decree of the lower Appellate Court being the last Court of fact and law as the lower Appellate Court, after examination of the entire evidence that Ujjagar Singh and after his death, his heirs became the owner of the suit land, which fell to Ujjagar Singh, by oral partition. Since they were exclusive owners, rightly so, the suit for possession has been decreed. The exchange deed (Ex.D1), remained unproved and was not looked into, in the absence of the registration, thus, urges this Court for dismissal of the present regular second appeal by upholding the judgment and decree, under challenge.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Question of Law' arises for determination:-

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1. Whether in view of the status of the parties of co-sharers, reflected in the revenue record i.e. jamabandi for the year 1970-71 (Ex.P1) and 1975-76 (Ex.P3), without reflecting any partition, the suit simpliciter for possession was maintainable or not?

The aforementioned documents i.e. Ex.P2, Ex.P3 and Ex.D4, placed on record, reveals the jointness amongst the predecessors-in-interest of the plaintiffs and the defendants. Khasra numbers are also the same. The aforementioned documents were noticed and read over by this Court, during the course of the hearing and could not be rebutted. The lower Appellate Court also noticed this fact of joint ownership, but believing the oral partition, which was not reflected in the revenue record, decreed the suit. In my view, the findings of the lower Appellate Court, is wholly preposterous and fallacious, much less, beyond the revenue record. The remedy for the parties was/is to seek the partition by way of separate possession, in case, they do not want to keep the jointness, but not in the manner and mode.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of the trial Court is restored. The Substantial Question of Law, as framed above, is answered in favour of the appellants-defendants and against respondent No.1/plaintiffs. Resultantly, the present second appeal is allowed.

08.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No