

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

**RSA No.2360 of 1988 (O&M)
Date of Decision.14.05.2019**

Gurdev Singh (deceased) through LRs

...Appellant

Vs

Amarjit Singh and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anil Kumar Ahluwalia, Advocate
for the appellant.

Mr. H.S. Bhullar, Advocate
for respondent No.1.

None for respondent No.2.

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AMIT RAWAL J. (ORAL)

C.M. No.13393-C of 2016

The application for impleading the legal representatives of deceased-appellant Gurdev Singh is allowed subject all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the appeal.

The amended memo of parties is taken on record and the registry is directed to put the same at appropriate place.

Main Case

The short point involved in the present regular second appeal is whether in case of sale by the co-owner in favour of the third party, the remedy for the plaintiff is to seek declaration to be owner in possession of land measuring 4 kanals 6 marlas or partition.

The appellant-plaintiff sought declaration to be owner in possession of land measuring 4 kanals 6 marlas i.e. half share of 8

kanals 12 marlas with restraint from selling the suit property. It was alleged that defendant No.2 purchased the land in equal share i.e. 14 kanals 16 marlas and mutation was sanctioned in favour of the plaintiff and defendant No.2. Jangir Singh had 1/5th share and had been in possession of some other land. He transferred his entire share by way of decree to the plaintiff after filing a suit for declaration and in these circumstances, plaintiff became owner of half share of land. Defendant No.2 sold the land against law and wanted to forcibly dispossess the plaintiff.

Defendants opposed the suit and stated that the suit was not maintainable and the remedy was to seek partition under Section 158 of the Punjab Land Revenue Act. It was alleged that family partition had taken place two years back between plaintiff, defendant No.2 and their brothers and the suit land which was sold by defendant No.2 to defendant No.1 was given to defendant No.2 and defendant No.2 after sale to defendant No.1 had delivered the actual possession. Defendant No.2 had earlier sold the land to Gurcharan Singh.

Both the parties led extensive evidence.

The trial Court dismissed the suit which was affirmed by the lower Appellate Court in appeal.

In the present appeal, civil misc. application bearing No.14955-C of 2016 has been filed for placing on record jamabandies for the year 2009-2010 and 2014-2015 by way of additional evidence under provisions of Order 41 Rule 27 CPC.

Mr. Anil Kumar Ahluwalia, learned counsel appearing for the appellant-plaintiff submitted that the defendant No.2 could not

sell the land once it was already partitioned and the concurrent finding of fact and law of the Courts below directing parties to claim separate possession seeking partition by metes and bounds is totally alien to the settled law.

Learned counsel appearing for the respondents submitted that the revenue record did not reflect any partition but joint possession, thus, concurrent finding of fact and law cannot be interfered with.

I have heard learned counsel for the parties, appraised the paper book, records of courts below and of the view that following substantial question of law arises for determination by this Court:-

“Whether in case of sale of share by a co-sharer, remedy of the plaintiff would be to seek partition and would be entitled to partition or declaration as sought for?”

The revenue record brought on record reflected jointness amongst co-sharers. The sale deed is also by one of the co-sharer qua his share in favour of third party. Vendee stepped into the shoes of erstwhile co-owner and shall be treated as a co-sharer. The plaintiff if does want joint possession, can seek protection of possession qua share already in his possession but not in the manner and mode as sought. In such circumstances, the application for additional evidence pales into insignificance.

In view of aforementioned fact, I do not find any illegality and perversity in the concurrent finding of fact. The

substantial question of law is answered in favour of the respondent-defendants and against the appellant-plaintiff. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 14, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No