

**RSA-1721-1988 (O&M)**

**416**

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

**RSA-1721-1988 (O&M)**

**Date of decision : 06.03.2019**

Naurang Singh (deceased) through LRs and others

... Appellants

Versus

Babu Singh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Akshay Bhan, Senior Advocate with  
Mr. Santosh Sharma, Advocate  
for the appellants.

Ms. Madhu Dayal, Advocate  
for the respondents.

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**AMIT RAWAL, J. (ORAL)**

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the plaintiffs for possession, after partition of half share of joint house/vacant land as ABCD, BCEFGHIJ and FBL (houses), situated in Village Rampur Tehsil Kharar, has been decreed by the trial Court and affirmed in appeal.

The plaintiffs sought the aforementioned relief by alleging that Dewan Singh was their common ancestor of Thaman Singh son of Suba Singh son of Karam Singh son of Khazana Singh. Out of four sons of Dewan Singh, two sons i.e. Musada Singh and Sudagar Singh died issueless and unmarried and the estate of Dewan Singh devolved upon their other two brothers Khazan Singh and Pardhan Singh in equal shares. The estate of Khazan Singh ultimately devolved upon Thaman Singh, whereas of Pardhan

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Singh upon the defendants. Vide sale deed dated 27.05.1957, Thaman Singh sold his entire land situated in Village Rampur to Nagina Singh, Basta Singh son of Ran Singh, ½ share Bachan Singh, Babu Singh sons of Dalip Singh, 1/4th share Kartar Singh and Ganda Singh 1/4<sup>th</sup> share along with share in shamlat and abadi deh along with his one abadi plot, thus, the plaintiffs stepped into the shoes of Thaman Singh and were in joint possession of the suit properties. The defendants had earlier filed a suit for partition *inter se*, but as soon as the plaintiffs were made a party, the same was withdrawn.

The defendants opposed the suit and denied the pedigree table and the land was held joint. It was alleged that the land was already partitioned. The estate of Pardhan Singh devolved upon Attar Singh and Ram Dial, predecessors-in-interest of the defendants. Thaman Singh sold some land to one Khola through sale deed to Nagina Singh and others, but the land, in dispute, was never sold by Thaman Singh to the plaintiffs.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the suit properties were owned and possessed by Dewan Singh, the common ancestor of Thaman Singh and the defendants, if so its effect? OPP.*
- 2. Whether the plaintiffs are the owners of 1/2 share of the properties in suit which originally belonged to Khazan Singh as alleged? OPP*
- 3. Whether the plaintiffs are in joint possession of the suit property? OPP*
- 4. Whether the suit land came in partition proceedings to Sh. Atar Singh and Ram Dial sons of Pardhan Singh to predecessors in interest of the defendants? OPD*

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5. *Whether Suba was not the owner nor in possession as co-sharer of the land in dispute? OPD*
6. *Whether the plaintiffs had purchased vide sale deed dated 27.5.1957 the share in shamlat and in abadi dah along with one abadi plot from Thaman Singh, if so its effect? OPP*
7. *Whether the plaintiffs have locus standi to file the present suit? OPP*
8. *Whether the description of the property has been correctly given? OPP*
9. *Whether the suit is bad for non-joinder of necessary parties? OPD*
10. *Whether the suit land was partitioned in the year 1882, if so its effect? OPD*
11. *Relief.*

Both the parties led evidence in respect of their respective cases.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellants-defendants submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law, as decree dated 06.11.1895 (Ex.DA) in favour of the appellants, reflected that Mehtab widow of Karam Singh was given a life estate, which after her death, devolved upon Attar Singh and Ram Dayal to the extent of  $\frac{1}{2}$ . Ram Dayal and Attar Singh inherited half share from Pradhan. Thaman Singh inherited  $\frac{1}{4}$ <sup>th</sup> share (i.e.  $\frac{1}{2}$  share out of  $\frac{1}{2}$  share of Khazan Singh. Khasra numbers mentioned in the sale deed were reflected in the plaint. The documents Ex.P4, Ex.P7, Ex.P9 and Ex.P13 have not been appreciated in correct perspective, thus, there is abdication.

Ms. Madhu Dayal, learned counsel appearing on behalf of the

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respondents-plaintiffs supported the impugned judgments and decrees on the premise that the status of the plaintiffs, after having purchased the land, was of co-sharer. The defendants did not deny the ownership of the property, but relied upon Ex.DA, which has no connection with the suit property, as the revenue record reflected the status as a co-sharer, thus, urges this Court for dismissal of the present regular second appeal as there is no gross illegality and perversity.

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

*1. Whether the judgment and decree of the Courts below suffer from illegality and perversity?*

There is no force and merit in the submissions of Mr. Akshay Bhan, for, revenue record reflected the status of Thaman Singh prior to the sale deed along with defendants as co-sharer. The defendants failed to place on record any material to establish that the parties had been in separate possession owing to the partition proceedings. Possession of every portion of land at the hands of every co-sharer, even if, the other co-sharer is not in possession on their behalf, until and unless a ouster of all is pleaded and proved. Revenue record, as per provisions of Section 44 of the Punjab Land Revenue Act, carries a presumption of truth, remained uncontroverted. All these factors weighed in the mind of the Courts below while decreeing the suit.

In view of what has been noticed above, I do not find any illegality and perversity in the judgments and decrees of both the Courts

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below. The substantial question of law, as framed above, is answered against the appellants-defendants and in favour of the respondents-plaintiffs. No ground is made out for interference. Resultantly, the present regular second appeal is dismissed.

**06.03.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**