

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

**RSA No.22 of 1988 (O&M)
Date of decision:31.01.2019**

Vijay Singh and another ... Appellants

Vs.

Lal Chand and another ... Respondents

RSA No.23 of 1988 (O&M)

Vijay Singh and another ... Appellants

Vs.

Lal Chand and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Yadav, Advocate
for the appellants (in both cases).

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.22 and 23 of 1988 preferred by the appellant-defendants against the concurrent findings of fact and law whereby suit of the respondent no.1-plaintiff seeking pre-emption of the sale deeds dated 10.12.1980 and 06.10.1980, has been decreed.

Respondent No.1/plaintiff instituted two suits of pre-emption of the aforementioned sale deeds on payment of consideration on the premise that he was co-sharer at the time when the sale was affected and therefore, he had right of pre-emption.

The defendants contested the suit by controverting the averments made in the plaint. It was stated that they were gair marusi over the suit land before the purchase and after purchase, they have become the owners. They denied the status of the plaintiff as co-owner. It was also stated that partition had already taken place as dispute arose regarding the land falling in khasra no.24/1 and 24/10 whereas suit for permanent injunction was filed on 08.06.1986 which was decided on 16.7.1981 on the basis of compromise as the parties were agreed for mutual partition. In such circumstances, the suit was liable to be dismissed being time barred also.

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

- “1. Whether the plaintiff is co-owner in the khewat of the suit land and as such has got a superior right of pre-emption?OPP
2. Whether the sale price was fixed in good faith or actually, paid?OPP
3. If issue no.2 is not proved, then what is the market value of the suit land?
4. Whether the vendees are entitled to the costs of stamps and registration charges in case the suit is decreed, if so how

much?

5. Relief.”

The plaintiff brought on record the revenue record to establish the jointness of the property. Even copies of the plaint and statement suffered by other co-sharer i.e. Lal Chand were also brought on record.

Mr. S.K.Yadav, learned counsel appearing on behalf of the appellant-defendants submitted that Ex.D1, Ex.D2, DW6/B and Ex.DY clearly established that plaintiff was not co-sharer after 16.8.1978 and has no right of pre-emption. In the injunction suit, the parties have arrived at compromise as Jai Ram and Suraj Bhan, the other co-owners were the respondents. The compromise reflected the partition amongst the parties way back and this fact is also supported by the statement dated 16.7.1981, Ex.D2 and 16.8.1978, Ex.DW6/B. Thus, both the Courts below have committed illegality and perversity in rendering the findings under challenge.

Per contra, Mr. Abhinav Sood, learned counsel for respondent no.1 submitted that Jai Ram and Suraj Bhan, other co-sharers, who had sold the property to the appellant-defendant no.1 in both the suits without giving offer to the plaintiff-Lal Chand, who was a co-sharer. In view of the provisions of Section 158 of the Punjab Land Revenue Act, the Civil Court did not have the jurisdiction to accord the partition in suit for injunction and thus, there is no illegality and perversity in the concurrent findings of fact and urged for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that following substantial questions of law arise for determination of the appeals:-

- “1. Whether the alleged partition on the basis of compromise was in consonance with the provisions of Section 123 of Punjab Land Revenue Act?
2. Whether the Civil Court in a suit for injunction can accord partition in view of the bar under Section 158 of Punjab Land Revenue Act.”

The statement and memo of parties revealed that plaintiff herein and therein had filed the suit for injunction against the respondents from restraining them for interference into peaceful possession. Though all the co-sharers are stated to have arrived at compromise but the alleged compromise was not reflected in the revenue record as on the day of sale, there was jointness. In such circumstances, in view of the law of pre-emption invoked at the relevant point of time, other co-sharers had right to pre-empt. For the sake of brevity, Sections 123 and 158 of Punjab Land Revenue Act, read thus:-

“123. (1) In any case in which a partition has been made without the intervention of a Revenue-officer, any party thereto may apply to a Revenue-officer for an order affirming the partition. (2) On receiving the application, the Revenue-officer shall inquire into the case, and, if he finds that the partition has

in fact been made, he may make an order affirming it and proceed under sections 119, 120, 121 and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter.

158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers: -Except as otherwise provided by this Act- (1) a Civil Court shall not have jurisdiction in any matter which the 1[State Government] or a Revenue-officer is empowered by this act to dispose of or take cognizance of the manner in which the 1[State Government] or any revenue-officer exercises any powers vested in it or him by or under this Act; and in particular-- (2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely:

- (i) any question as the limits of any land which has been defined by a revenue-officer as land to which this Act does or does not apply;”

The Civil Court dealing with the controversy/nature of the suit being injunction could not have accorded the partition and just disposed of the suit. If at all, the parties actually arrived at compromise, the entry to that effect could have been reflected in the revenue record. In the absence of the same, judgment and decree of the Courts below in my view cannot be said to be suffering from illegality and perversity while decreeing the suit

noticing the revenue record showing jointness of the property.

The substantial questions of law aforementioned are answered against the appellant-defendants and in favour of respondent No.1/plaintiff.

Resultantly, the appeals are dismissed.

January 31, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No