

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

RSA No.393 of 1989 (O&M)

Date of decision:20.05.2019

Pritam Singh (since deceased) through LRs ... Appellant

Vs.

Girdhari (since deceased) through LRs ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.B.Goel, Advocate
for the appellant.

Ms. Alka Sarin, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present regular second appeal at the instance of appellant-defendant is directed against the concurrent findings of fact and law whereby suit of the respondent-plaintiff for pre-emption of the sale deed being co-sharer has been decreed and affirmed in appeal.

The respondent-plaintiff pre-empted the sale deed in question constituted by the co-sharers claiming preferential rights.

The defendant opposed the suit and denied to be bonafide purchaser and stated that his vendor was not a co-sharer. Both the parties led evidence, resulting into decretal of the suit.

Mr.C.B.Goel, learned counsel appearing on behalf of appellant-defendant submitted that alongwith appeal, an application bearing No.479-C of 1989 under Order 41 Rule 27 of Code of Civil Procedure, has

been filed as the question involved and to be required to be answered whether the partition had taken place before the decree passed by the trial Court and order dated 20.3.1987 as Ex.DW2/A. Against the aforementioned order, the appeal was filed by Dharam Singh before the Commissioner (Appeals) Ambala Division, Ambala and cross appeal was also filed by the present appellant. Dharam Singh suffered a statement before the Commissioner, Ambala Division, Ambala for withdrawal of appeal and accepted the order of Tehsildar dated 20.03.1987 partitioning the land in dispute and therefore, the evidence aforementioned is essential and necessary for adjudication of the appeal as the entire tenor and mode of the partition obtained reflected the land had already been partitioned.

He further submitted that once property was already partitioned, naksha kha and naksha zeem were the consequential effect, therefore, it was complete in all respects but Courts below failed to notice order dated 20.03.1987 Ex.DW2/A. Respondent-plaintiff has not been able to deny the aforementioned statement then the Annexures R-1 to R-4 in such circumstances would be meaningless. In fact, suit was filed without disclosing the aforementioned facts.

Ms. Alka Sarin, learned counsel for the respondent has drawn the attention of this Court to the reply filed wherein in para 2, it has categorically been denied that Dharam Singh filed an appeal before the Commissioner Ambala against the order dated 20.03.1987, Ex.DW2/A. Dharam Singh and Kalawati had filed a joint appeal in the Court of Collector Nuh against the order dated 5.2.1987 (Annexure R-3) passed by

Tehsildar A.C.Ist Grade, Nuh declining to set aside ex parte proceedings dated 20.10.1986 but permitted to file objections to Naksha Kha. During the pendency of the appeal before Collector Nuh, Tehsildar in order to avoid stay granted in the said appeal by the Collector changed the date of hearing from 20.4.1987 to 20.03.1987 without notice and passed order dated 20.03.1987, Ex.DW2/A. While deciding appeal against the order dated 5.2.1987 noticed vide judgment dated 01.12.1987, that Tehsildar had changed the date of hearing from 20.04.1987 to 20.03.1987. Against the order dated 1.12.1987, Dharam Singh had filed appeal before Commissioner Ambala and present appellant/Pritam Singh had filed cross appeal. Kalawati was satisfied and did not file any appeal. Both the appeals were dismissed as withdrawn on 25.08.1988. In such circumstances, there was no partition and status of the parties remained as of co-sharers. Attention of this Court was also drawn to Annexures R-1 to R-3.

She further submitted that concurrent findings of fact and law cannot be tinkered with until and unless there is gross illegality and perversity. The additional evidence cannot be taken into consideration, for, as much water flown thereafter i.e. against the dated 20.03.1987, Ex.DW2/A. Appeal was filed which was allowed vide order dated 01.12.1987 permitting the party to file the objections qua naksha kha. Appeal before the Commissioner (Appeals) Ambala Division, Ambala vide appeal no.18 of 1987 and vide order dated 25.08.1988, was ordered to be withdrawn. In such circumstances, there was no final order of partition and the property was still of co-sharers, thus, the suit was perfectly

maintainable.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the arguments of Mr. Goel.

I need not to frame the substantial questions of law in view of the law laid down by the Hon'ble Supreme Court in **Civil Appeal No.4988 of 2019 titled as Kirodi (D) through LRs Vs. Ram Parkash and others, decided on 10.5.2019.**

It is settled law that partition proceedings are not final till the order of partition is passed. It is only when the final order is passed. The order of partition is like a preliminary decree. The final decree is always drawn after preparation of the site plan and decision of objections.

It is a matter of record that against the order Ex.DW2/A, the respondent-plaintiff had filed an appeal which was allowed vide order dated 01.12.1987, Annexure R-1. Respondent-plaintiff was given time to file objections qua naksha kha, same reads as under:-

“Consequently, I accept the appeal to this extent that the appellants be given full opportunity to raise objections regarding naksha kha and only after hearing the objections etc of both the parties regarding naksha kha, the partition case be decided. Hence, I set aside the order dated 30.3.1987 passed by A.C.I Nuh. Both the parties are directed to appear before Tehsildar Nuh, on 8.12.1987.

Order pronounced this date on 1.12.1987 in open Court. ”

Against aforementioned order, the appellant filed an appeal which was withdrawn vide order dated 25.08.1988, same reads as under:-

“Before Shri J.K.Duggal, IAS, Commissioner (Appeal) Ambala Division.

Ex.Appeal No.18 of 1987-88

Pritam Singh son of Natha Singh r/o Bainsi, Tehsil Nuh Distt. Gurgaon.

.....Appellant

Vs.

Dharam Singh son of Gauri Girdhari, s/o Giasi.

Smt. Kalawati w/o Girdhari, r/o village Bainsi Tehsil Nuh Distt. Gurgaon.

...Respondents

*Present : Sh. Satish Gupta, Advocate for
Sh. Avtar Singh Kohli, Advocate
for the appellant.*

Order

This appeal was filed against the order of Collector Gurgaon dated 1.12.1987.

2. A request has been made by the appellant that he is not interest in pursuing the case and permission may be granted to withdraw it.

3. In view of the request of the appellant, I allow the appellant to withdraw it.

Announced.

Sd/-

Dated 25.8.1988

J.K.Duggal,
Commissioner (Appeal) Ambala Division.”

Thus, status of parties as on date of filing of suit and passing of decree was of co-sharers and sale deed dated 25.08.1986 was out of joint holding. Law of Pre-emption 1950 envisaged as it then was, preferential rights in favour of co-sharer i.e. plaintiff, in present case. Thus, judgments and decrees under challenge cannot be said to be suffering from any illegality or perversity.

The arguments of Mr. Goel have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Ms. Alka Sarin, learned counsel for the respondent submitted that since operation of the impugned judgment and decree has been stayed, her client may be given time to deposit the amount, if not already deposited.

Liberty is granted to the respondent to deposit the amount within a period of two months.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 20, 2019
savita

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