

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

RSA No. 4622 of 2012(O&M)

Date of decision: 6.9.2019

Jaswant Singh and another

.....Appellants

VERSUS

Krishna Devi

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Punchhi, Advocate for the appellants.

Mrs. R.K. Thind , Advocate for the respondent.

REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against consistent findings recorded by the Courts whereby suit for declaration with consequential relief of permanent injunction in respect of land comprising killa No.25 (7-11) situated in village Bani District Sirsa on the basis of sale deed dated 24.06.1985 purported to be executed by Jeet Singh son of Dana Ram and on the basis of family settlement was dismissed by the trial Court vide judgment and decree dated 30.07.2011 that came to be affirmed in appeal filed by unsuccessful appellants/plaintiffs.

Perusal of the impugned judgments would reveal that the appellants also challenged mutation No.5523 dated 15.06.2001 and order of partition dated 08.03.2001 passed by the Collector, Ellenabad. Counsel for the appellants would fairly inform that order of partition dated 08.03.2001, sought to be challenged by the plaintiffs was not produced on record. In response to a query, he would inform that in the partition

proceedings, the appellants have been allotted land measuring 2 kanal 16 marlas as against their ownership of 7 kanal 11 marlas, in view of sale deed dated 24.06.1985. Even if the appellants have been allotted less area than that of their ownership in partition proceedings, the appropriate remedy available to the appellants was to challenge the order of partition before a competent Fora and not before the Civil Court. The jurisdiction of the Civil Court to examine correctness and validity of partition order is barred under Section 158 of the Punjab Land Revenue Act, 1887 unless the same suffers from such a defect that renders it *void ab initio*. In the case at hand, no such plea has been raised by the appellants that order of partition violates the provision of natural justice and amenable to challenge before the Civil Court. Rather, the order of partition has not seen the light of day in the present proceedings. Once the order of partition has attained finality, the appellants cannot be heard to say that they are entitle to land measuring 7 kanal 11 marlas on the basis of sale deed dated 24.06.1985. I would hasten to add that even if there was some dispute between the parties with regard to title qua the land subject matter of partition proceedings, the appellants were well within their right to raise that dispute before the Revenue Authorities or seek its reference for adjudication by the Civil Court but after finalization of the partition proceedings, they cannot raise that dispute before the Civil Court by filing a suit for declaration and permanent injunction. In this view of the matter, I do not find an error much less perversity in the impugned judgments, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs. However, nothing

stated hereinbefore shall cause prejudice to right of the appellants to avail appropriate remedy to challenge the partition order, if so available in law.

SEPTEMBER 6, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no