

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

**RSA No.1487 of 2013(O&M)
Date of Decision-03.12.2019**

Inder Singh ... Appellant

Versus

Sukhbir Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S. Brar, Advocate
for the appellant.

Mr. I.S. Brar, Advocate for
Mr. A.S. Sivia, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in regular second appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Brief facts of the case are that the plaintiff filed a suit for declaration and permanent injunction to the effect that land measuring 166 kanals, 3 marlas as shown in the plaint is a joint land between the parties and the plaintiff is in possession of 23 kanals, 2 marlas of land on the basis of arrangement. Mutations No.8275 and 8276 sanctioned on 30.09.1998 are illegal, null, void and not binding upon the rights of the plaintiff. He further sought

decree for permanent injunction, restraining the defendants from disposing of specific khasra numbers on the basis of entry in the revenue record. Plaintiff pleaded that he is owner of 462/3323 share as per *jamabandi* for the year 1994-95. Earlier he was owner of 35 kanals, 7 marlas of land, out of which he disposed of 12 kanals, 5 marlas in favour of defendants No.7, 10 and 11. The suit land has not been partitioned between the parties. He further pleaded that khasra No.173, killa No.26(20-8), musteel No.204, killa No.26(19-17) were kept as reserved. Plaintiff came to know that mutations No.8275 and 8276 dated 30.09.1998 were got sanctioned by the defendants, whereas there was no document or rapat with the Patwari in respect of family partition or partition by consent. The alleged partition did not take place at any point of time, nor any arrangement was made in respect of passage and water course. The property is claimed to be joint between the parties and mutations No.8275 and 8276 dated 30.09.1998 are required to be ignored being illegal and fraudulent.

[3]. Defendants No.1 to 3 and 6 contested the suit jointly by filing common written statement. They pleaded that the property was partitioned by way of consent on the basis of which mutations in question were sanctioned. The aforesaid defendants claimed themselves to be in possession of specific khasra numbers. Passage and water course were also adjusted with the consent of the parties. Defendants No.4 and 5 admitted the claim of the plaintiff.

[4]. After filing replication to the written statement, both the parties went to trial on the following issues:-

"1. Whether suit land is joint among the parties? OPP

2. Whether partition mutation No.8275 and 8276 are illegal, null and void and not binding upon the plaintiff? OPP

3. Whether plaintiff is entitled to declaration as prayed for? OPP

4. Whether plaintiff is entitled to permanent injunction as prayed for? OPP

5. Whether suit is within period of limitation? OPP

6. Whether plaintiff has concealed material facts from the Court? OPD

7. Whether plaintiff got no cause of action to file the present suit? OPD

8. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD

9. Whether plaintiff got no locus standi to file the present suit? OPD

10. Whether this Court got no jurisdiction to try and decide the present suit? OPD

11. Relief."

[5]. Trial Court took issues No.1 to 5 jointly and decided the same against the plaintiff. Issues No.6 to 9 were also discussed jointly and decided the same against the plaintiff. Issue No.10 was decided in favour of the plaintiff. Vide judgment and decree dated 30.11.2011, the trial Court dismissed the suit with costs. Plaintiff

remained unsuccessful before the Lower Appellate Court and the appeal was dismissed by the Lower Appellate Court vide judgment and decree dated 09.01.2013.

[6]. I have heard learned counsel for the parties.

[7]. Learned counsel for the appellant vehemently submitted that rapat No.407 was not available on record. Mutation on the basis of such rapat cannot advance the case of defendants in the context of any partition on account of consent or family settlement. Defendants have not set up the plea of family settlement on the basis of aforesaid rapat No.407 dated 04.09.1998. Learned counsel further submitted that selling of specific khasra numbers, out of joint property would amount to sale of share till the land is partitioned by metes and bounds. Learned counsel also submitted that there was no family partition, nor the plaintiff was ever issued with any notice of such partition. Rapat No.438 executed by Patwari showing partition of the property on account of family settlement was denied. Learned counsel further pleaded that in view of testimonies of Chand Singh and Hazara Singh, the land measuring 166 kanals, 3 marlas is joint between the parties and the plaintiff is in possession of 23 kanals, 2 marlas which is equivalent to 462/3323 share and the mutations No.8275 and 8276 dated 30.09.1998 of family partition are illegal. He placed reliance upon *jamabandi* for the year 1994-95 (Ex.P1), *jamabandi* for the year 1999-2000 (Ex.P2), *jamabandi* for the year 2004-05 (Ex.P3), mutations No.8275 and

8276 (Ex.P4 and Ex.P5), rapat No.407 (Ex.P6) and rapat Nos.4 and 5 (Ex.P7).

[8]. Per contra, learned counsel for respondents No.2 and 3 relied upon testimony of defendant No.6 Joginder Singh (DW 1) who stated that all the brothers had partitioned the suit land on 30.08.1998 and thereafter, the property came in possession of respective co-sharers as owners. Daughter of Sadhu Singh had also sold the property in favour of her son after admitting the partition to be correct. Plaintiff had knowledge about the partition from the very beginning and he had also joined the proceedings. Document of partition was scribed by the Patwari. The witness also admitted that khasra No.173, killa No.26(20-8) and musteel No.204 killa No.26(19-17) were kept as reserved and the remaining property was inferior. Learned counsel also relied upon statement of defendant No.7 Jaspinder Singh (DW2). The aforesaid witness submitted that he had purchased an area measuring 8 kanals on 23.10.2001 from the plaintiff himself and mutation was also sanctioned of the said area and he is in possession of the land so purchased by him. Defendant No.2 Simarjit Singh was examined as DW 3 and the witness relied upon rapat No.438 dated 30.08.1998 in respect of partition of the property which was got entered by the Patwari vide which possessions were exchanged between the parties. The witness also referred to the fact that after the partition had taken place, there was an exchange of land vide document dated 08.05.2002, vide which defendant No.4 Darshan Singh and

defendant No.5 Chand Singh exchanged their land with defendant No.3 Harwinder Singh. Mutation of exchange No.8622 was also sanctioned. Plaintiff himself sold 8 kanals of land to defendant No.7 Jaspinder Singh for which mutation No.8568 was also sanctioned. The witness had admitted that document of partition was scribed on 08.05.1998 by the Patwari and the same was scribed on a stamp paper. Rapat No.438 dated 30.08.1998 (Ex.D1), mutation No.8622 (Ex.D2), mutation No.8941 (Ex.D3), mutation No.8719 (Ex.D4) and mutation No.8568 (Ex.D5) have been relied by the defendants in support of their case showing factum of partition between the parties and thereafter, exchange of land between defendant No.4 and defendant No.5 with defendant No.3 and selling of land measuring 8 kanals by the plaintiff to defendant No.7. Mutations No.8622 and 8568 respectively were sanctioned in the context of aforesaid transactions. Avtar Singh, Halqa Patwari was summoned with the help of additional evidence. The testimony of aforesaid witness further proved that in the year 1998, he was Halqa Patwari. Parties contacted him with writing of family settlement and rapat No.438 (Ex.D1) was executed. Mutations No.8275 and 8276 were sanctioned. The cross-examination of the witness in the context of seeing the rapat No.407 (Ex.P6) and non-production of writing of family settlement were of no consequence as the family settlement was acted upon between the parties. Plaintiff had sold 8 kanals of land and mutation No.8568 was sanctioned. Defendants No.4 and

5 got their land exchanged with defendant No.3 and mutation No.8622 was also sanctioned.

[9]. It is a settled principle of law that family partition if given effect in the revenue record by conduct of the parties, the same has to be treated as a valid partition.

[10]. Evidently, mutations in dispute were sanctioned on 30.09.1998 and the suit was filed on 12.06.2007. In the revenue record viz. *jamabandi* for the year 1999-2000, parties have been shown to be in separate possession and owners qua the suit property. Plaintiff himself mortgaged the land and sold some portion of the land which came in his possession after the partition. As per rapat Nos.4 and 5 (Ex.P7), there was an entry regarding mutation No.7231 of mortgage and redemption. The aforesaid mutation and mutation No.8568 would give rise to a positive conclusion that the plaintiff himself after accepting the family settlement, entered into the process of mortgage and sale by acknowledging the family partition between the parties. *Jamabandi* for the year 1999-2000 has evidenced the factum of partition which was duly given effect in the revenue record. *Jamabandi* being a public document has to be taken on its face value and filing of suit on 12.06.2007 would be barred by limitation.

[11]. Even defendants No.4 and 5 who admitted the claim of the plaintiff, exchanged the land being owners with other co-sharers. All these evidence, conclusively proved that a valid

partition had taken place with the consent of the parties and the same was duly acted upon. Some mistake in rapat may not tilt any such equity in favour of the plaintiff, particularly when conduct of the plaintiff himself suggested that there was a valid partition which was duly given effect in the revenue record and the same was acted upon by the parties by way of subjecting the land so partitioned to mortgage, sale and exchange. Plaintiff could have shown that he never acted upon the alleged partition or had not mortgaged his share or exchange the possession or the ownership, but no such evidence has been led by the plaintiff. Plaintiff had executed the sale deed. The said sale deed could have been produced by him by showing the land to be joint, but no such sale deed was produced by the plaintiff. Other co-sharers have not opted to challenge the partition in any manner. Other defendants have also been shown to be in separate possession and they have contended themselves with the status as shown in the revenue record. Different co-sharers have been shown in possession of different parcels of land and on determination of their shares, they have been shown to be owners of separate parcels of land on the strength of partition. Defendants have acted upon the partition on the basis of their status in the revenue record and even mortgaged, exchanged and sold the property which ultimately fell to their share/ownership. The plea of fraud has not been proved by way of leading any evidence by the plaintiff.

[12]. In my considered opinion, both the Courts below have decided issues No.1 to 5 on the basis of correct appreciation of evidence on record. Issues No.6 to 9 have been correctly decided and this Court also endorsed the same. Only plaintiff has come forward to challenge the family partition. Other co-sharers have not filed any suit, nor questioned the partition in any manner. The area so received by them has been further subjected to mortgage, exchange and sale. Even the plaintiff subjected his share to mortgage and sale. *Jamabandies* for the year 1994-95 (Ex.P1), 1999-2000 (Ex.P2) and 2004-05 (Ex.P3) proved the status of partition. Khasra Nos.204//26(19-7) and 173/26 (2-16) are proved to be an orchard.

[13]. Both the Courts below have recorded firm finding of fact in respect of family partition. Mohinder Singh one of the co-sharers produced the family settlement before the revenue authority and the factum of family partition was recorded in the mutations in question after entering the same in the rapat *roznamcha*. Mutation Ex.P4 has proved the aforesaid fact where in column No.13, it is so mentioned that the land has been partitioned vide rapat No.407 dated 04.09.1998. Any ambiguity in recording rapat No.407, would not crystallize any such right in favour of the plaintiff, particularly when conduct of the parties has proved the factum of family partition which was duly given effect in the revenue record. By act and conduct of the plaintiff, the factum of family partition has been proved when he himself subjected the land so received by him to

mortgage and sale. The cross-examination of the plaintiff/appellant has suggested that partition was effected and his separate share was recorded in the revenue record. The cultivation of separate piece of land coupled with status of the parties in the revenue record and conduct of the parties in utilizing the land according to their wishes, proved the factum of family settlement to the hilt. Plaintiff has withheld the evidence of sale deed to show that the property was joint and the sale was of share out of the joint property. The adverse inference has been rightly drawn against the plaintiff. Both the Courts below have also recorded correct findings under issue No.10 by holding that Civil Court has got the jurisdiction to decide the present civil suit.

[14]. The findings of fact recorded by both the Courts below are based on appreciation of evidence produced by both the parties. It is a settled principle of law that in regular second appeal, there cannot be any re-appreciation of evidence. The appellant could not show that the findings recorded by the Courts below are perverse or the result of misreading of evidence. No substantial question of law worth cognizance by this Court is involved in the present appeal. The substantial questions of law as framed by the appellant in Para No.7 of the grounds of appeal, do not arise for any consideration. Plaintiff could not show that the evidence produced by the defendants was inadmissible and beyond the pleadings, nor the plaintiff could prove that the findings recorded by the Courts below are vitiated on account of misreading of evidence.

Plaintiff could not prove the joint status of the parties over and above the status shown in the revenue record or the judgments and decrees passed by the Courts below having suffered with any perversity.

[15]. For the reasons recorded hereinabove, I find that no question of law much less substantial question of law is involved in the present appeal. The present appeal is found to be totally devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

03.12.2019
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No