

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

RSA No.1788 of 2016 (O&M)  
Date of Decision.13.02.2019

Surinder Singh

...Appellant

Vs

Tirath Singh (D) through LR's and others

...Respondents

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

Present: Mr. Parvinder Singh, Advocate  
for the appellant.

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**AMIT RAWAL J. (ORAL)**

The appellant-plaintiff has not been successful in claiming separate possession in respect of 1/4<sup>th</sup> share by partition of residential house and *abadi bara* in respect of property mentioned below with consequential relief of restraining defendants from raising any type of construction.

Property No.1: bounded as

North: Surinder Singh & others (landed property)

South: Road

East: Property of Ajaib Singh, Sahib Singh and Makhan  
Singh.

West: Mal Singh etc. and Balwant Singh

Property No.2: bounded as

North: Gali

South: Property of plaintiff

East: Rasta

West: Property of Surjit Kaur

Property No.3: bounded as

North: Property of Gurcharan Singh & Mal Singh.  
South: Property of Sohan Singh  
East: Property of Jarnail Singh  
West: Gali situated within the abadi of village  
Sahauran, Tehsil Kharar, District Mohali.

It was alleged that parties to the *lis* were real brothers. Defendants being strong persons threatened to raise construction on more valuable and strategically located land illegally, forcibly and without partition.

Defendants appeared and opposed the suit and gave explanation that property No.1 was purchased by Joginder Singh, father of plaintiff and defendants vide sale deed dated 4.1.1971 whereas property No.2 shown in the yellow colour in their site plan of the defendants, was received in exchange vide exchange deed dated 20.05.1976 written and signed by Joginder Singh and Gurbax Singh. Property No.4 in yellow colour in the site plan of the defendants was purchased vide sale deed dated 10.06.1974 and property No.5 in red colour was purchased by defendants Tirath Singh, Ramel Singh, Avtar Singh sons of Joginder Singh from Charan Singh, Labh Singh sons of Bachan Singh. Property No.6 in brinjal colour of site plan *ibid*, was purchased by defendants from Balwant Singh and property No.7 in orange colour in the site plan of the defendants was purchased by defendants from Kaka Singh son of Hazura Singh. Joginder Singh (since deceased) father of defendants also received in exchange property No.8 as per the site plan aforementioned. Property No.9 consisted of pakka room of three khans and open yard. Property

No.10 consisted of one pakka room of three khans and open yard along with property No.11 and 12 constructed open yards. Property Nos.9 to 12 were ancestral properties of Joginder Singh father of the plaintiff and defendants. Joginder Singh during his life time executed a Will dated 10.11.1997 of his share in properties which were purchased by him, in favour of defendants. On 2.1.2000, an oral partition in the presence of Sukhdev Singh Mangat, B.D.P.O. (retd) and other persons was effected between plaintiff and defendants. Property No.9 was given to defendant No.1, property No.10 to plaintiff Surinder Singh and property No.11 to defendant No.2 whereas property No.12 to defendant No.3 Avtar Singh. Plaintiff had no concern with the property Nos.1 to 8. As per site plan of defendants, even the measurement was also incorrect. It was denied that property Nos.9, 10 and 11 were partitioned.

Plaintiff in respect of aforementioned pleadings examined himself and Jaspal Singh PW2 and brought on record site plan Ex.P1. On the other hand, defendants examined nine witnesses and brought on record Ex.D1 to D30.

Mr. Parvinder Singh, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in dismissing the suit, as did not understand the fact that alleged Will had not been proved. It was in fact vague and ambiguous, therefore, could not be given effect. It revealed that only three properties were mentioned whereas as per the case of the defendants Will was silent about nine properties as it was surrounded of many suspicious circumstances, which remained

undispelled nor saw light of the day before the present suit. The Courts below completed misdirected by accusing the plaintiff of concealing material facts. In fact, it were defendants, who did not approach the Court with clean hands and allegedly relied upon two sale deeds dated 24.07.2006, which reveals that same were procured in connivance with the alleged sellers after filing present suit, therefore, liable to be excluded from consideration. DW1 Tirath Singh in cross-examination revealed that defendants allegedly got the sale deeds prepared after the institution of the suit.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Parvidner Singh. Admittedly, parties were real brothers being sons of Joginder Singh son of Gurmukh Singh. Labh Kaur was mother. Joginder Singh died on 15.01.2000 and during his life time executed Will dated 10.11.1997 Ex.D9/B. The Will is always a deviation from the line of succession. Joginder Singh, in fact, owned 120 bighas of land, which divided into four portions and share of 30 bighas fell to the plaintiff, which fact is evident from the Will but plaintiff did not disclose the aforementioned fact whereas present suit was filed with regard to three properties without any dimensions.

As regards ancestral properties No.9 to 12, they were partitioned amongst brothers on 2.1.2000 i.e. during the life time of their father proved through two writings dated 28.6.2000 and 7.8.2000 Ex.DW1/A and DW2/A in this regard. All these factors weighed in the mind of Courts below while rendering the concurrent

finding of fact.

In view of such circumstances, arguments of Mr. Parvinder Singh had not been able to bring the case within the realm of illegality and perversity to form a different opinion then the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

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

**February 13, 2019**

Pankaj\*

Whether Reasoned/Speaking    Yes

Whether Reportable                No