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

RSA No.2220 of 2016 (O&M)
Date of Decision.27.02.2019

Tarsem Singh and another ...Appellants

Vs

Smt. Atto ...Respondent

2. **RSA No.3605 of 2016 (O&M)**

Atto (now deceased) through LRs ...Appellant

Vs

Kuldeep Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Veneet Sharma, Advocate
for the appellants in RSA No.2220 of 2016.

Mr. B.D. Sharma, Advocate
for appellants in RSA No.3605 of 2016.

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AMIT RAWAL J. (ORAL)

C.M. No.5798-C of 2016 in RSA No.2220 of 2016

For the reasons stated in the application, delay of 25 days in filing of the appeal is condoned.

Application is allowed.

C.M. No.9424-C of 2016 in RSA No.3605 of 2016

The application for impleading the legal representatives of deceased-Atto is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

Main cases

This order of mine shall dispose of two regular second appeals bearing Nos.2220 of 2016 and 3605 of 2016 arising out of

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between the same parties.

Atto filed civil suit No.575 of 2005 (hereinafter called the 1st suit) against defendants including Tarsem Singh and Swinder Kaur. They have been referred to, as they were also impleaded defendants in another suit, reference to which I will give little later. The first suit was filed for declaration of owner in possession of the land measuring 2 kanals 9 marlas comprised in Khasra No.4679, Khata and Khatoni No.611/1758 as per jambandi for the year 2000-2001 situated in village Sultanwind Sub Urban, Taraf Mahal, Tehsil and District Amritsar and for permanent injunction restraining the defendants from interfering into the possession of the plaintiff.

During the pendency of 1st suit, plaintiff filed another suit i.e. Civil Suit No.572 of 2007 (hereinafter called 2nd suit) against Tarsem Singh and Swinder Kaur, appellants in RSA No.2220 of 2016, for injunction with regard to khasra No.4679/1(2-9). Though trial Court dismissed the suit, the lower Appellate Court reversed the judgment and decree of the trial Court by decreeing the suit.

Both the parties in support of pleadings placed on record documents of revenue, jamabandies and partition proceedings etc.

The trial Court the lower Appellate Court dismissed the 1st suit on the premise that since khasra No.4679 was partitioned on 20.02.2000 and thereafter bifurcated whereby Atto was put in possession of Khasra No.4679/1 measuring 2 kanals 9 marlas, did not accord declaration but the same Judge in the appeal preferred against dismissal of 2nd suit, protected possession of Atto by relying upon the very same documents as well as khasra numbers.

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Mr. Veneet Sharma, learned counsel appearing for the appellant in RSA No.2220 of 2016 submitted that partition proceedings were not final as they have been set aside. In such circumstances, Kuldip Singh sold half share of land measuring 5 kanals 12 marlas to Sandeep Singh and Sonia Kaur and Kuldip Singh and Sarabjit Singh sons of Joginder Singh also sold half share of land measuring 5 kanals 12 marlas to Tarsem Singh and Sawinder Kaur vide registered sale deeds dated 15.6.2014. Defendants have been in possession of the disputed property by encircling it with boundary wall and gate. Sale deeds have been proved on record through the testimony of Gurdeep Singh, deed writer and even loan was obtained from the Punjab National Bank, Cantt Branch, Amritsar. Jamabandi for the year 2000-2001, khasra girdawari and certain orders were placed on record as Ex.D1 to D9. Sale deeds pertained to khasra No.4679. The 2nd suit during the subsistence of the 1st suit was not maintainable and barred as per the provisions of Order 2 Rule 2 CPC. Khasra No.4679 in total was measuring 10 kanals 10 marlas. Partition proceedings did not culminate into finality whereas the plaintiff obtained the rapat roznamcha reflecting execution of the orders of the first revenue court.

Mr. B.D. Sharma, learned counsel appearing on behalf of the appellants in RSA No.3605 of 2016 submitted that the lower Appellate Court had already protected possession of the appellant-plaintiff in 2nd suit with regard to khasra No.4679/1 measuring 2 kanals 9 marlas, therefore, he would not be pressing as the primary relief was for declaration and consequential relief of injunction,

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which has been granted in the 2nd suit. Defendants admitted the partition proceedings and bifurcation of the khasra number. The stay of partition proceedings would not non-suit the plaintiffs as they have been established to be in exclusive possession. If at all, there is any grievance, the remedy is to seek partition.

I have heard learned counsel for the appellants in both appeals, appraised the paper books and of the view that there is no force and merit in the submissions of Mr. Veneet Sharma and Mr. B.D. Sharma. The partition proceedings dated 29.10.1999 with regard to bifurcation of the khasra No.4679 was not denied by the defendants, though assailed in appeal qua partition and bifurcation of khasra number. Rapat roznamcha established that Atto was put in possession of specific area i.e. 2 kanals 9 marlas. It is settled law that in dispute amongst the co-sharers since the original khasra No.4679 is measuring 10 kanals 10 marlas, for claiming actual possession regarding the value and its utility, the remedy is to seek partition. The law with regard to granting injunction to a co-sharer having exclusive possession is no longer *res integra,* in view of ratio decidendi culled out by Full Bench judgment of this Court in ***Bhartu Vs. Ram Sarup 1981 PLJ 204*** and Division Bench judgment in ***Bachan Singh Vs. Swaran Singh 2000(3) RCR (Civil) 70.*** Defendants have not been able to establish the possession as the sale deed dated 4.6.2004 reflected purchase of some share in khasra No.4679. The Courts below were correct in declining the declaration of entire khasra No.4679 to the plaintiff as it was owned by other co-sharers. Defendants have also not been able to establish that plaintiff

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in lieu of rapat roznamcha, even if partition proceedings were pending, but not put into possession of land measuring 2 kanals 9 marlas out of 10 kanals 10 marlas. The injunction in such circumstances was inevitable and is most innocuous, for, both the parties are at liberty to seek remedy of partition in appropriate forum in accordance with law.

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

February 27, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No

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