

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

**RSA No.3547 of 2016 (O&M)
Date of Decision.15.01.2019**

Viro and others
Vs
Piyar Kaur and others

...Appellants
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs are aggrieved of the judgment and decree of the lower Appellate Court allowing appeal of the respondent-defendant by setting aside the judgment and decree of the trial Court, which had decreed the suit.

The appellants-plaintiffs sought declaration and joint possession and consequential relief of injunction against the defendants, 27 (twenty seven) in number on the premise that defendant No.24 Major Singh son of Bachan Singh son of Bur Singh was co-owner to the extent of 1/27th share whereas Kashmir Singh and Balbir Singh, defendants No.25 and 26 were co-owners to the extent of 1/27th share in the land measuring 9 kanals 18 marlas bearing Khata No.165/545-546 comprising khasra No.29/2/3/1(3-6) 29/3/2(5-7) 2/3/1(1-5). They sold the land to the plaintiffs already vide valid sale deed on 27.01.2003. Plaintiffs made reasonable enquiry and due inspection of the revenue record but later obtained a copy of jamabandi on 21.06.2004 and acquired knowledge regarding mutation No.5523 reflecting partition. In Khasra No.29, which is

subject matter of the suit, land measuring 9 kanals 18 marlas was shown to be exclusively owned by Avtar Singh, defendant No.14 and remaining land in the name of other persons including Ajit Singh and Gurjit Singh, defendants No.1 and 2. The partition was sanctioned in the year 1992 but the mutation was granted after 10 years. It was alleged that vendors of the plaintiffs were not arrayed in the partition proceedings and therefore, it did not have any binding effect.

Defendants opposed the suit and alleged that neither Major Singh nor Kashmir and Balbir Singh were co-owners to the extent of 2/27 share as the property vide order dated 14.11.1992 in case No.69 of 1991 titled as “Avtar Singh Vs. Dhan Kaur” was already partitioned and respective possession as per the partition were delivered to the parties vide Rapat No.21 dated 19.6.2001 and 99 dated 18.10.2000. In such circumstances, the vendors of the plaintiffs had no alienable right in respect of the suit land.

Defendant No.27 filed separate written statement and opposed the suit.

After receipt of the replication, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to the relief of declaration as prayed in the head note of the plaint? OPP

2. Whether the plaintiffs are entitled to the relief of joint possession as prayed in the head note of the plaint? OPP

3. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed in the head note of the plaint? OPP

4. Whether the suit is not maintainable? OPD

5. Whether the partition order passed by Tehsildar-cum-Assistant Collector, Tarn Taran dt. 14.1.1992 is valid?

OPD

6. Whether the defendant no.27 is bona fide purchaser of land measuring 14M vide registered sale deed dated 24.12.2007? OPD

7. Whether the suit is barred by limitation? OPD

8. Relief.”

Plaintiffs examined four witnesses and brought on record Ex.P1 to P11 whereas the defendants examined four witnesses and brought on Ex.D1 to D8 including the orders of partition and sanad taksim, rapat roznamcha etc.

The trial Court on preponderance of evidence decreed the suit and restrained defendant Nos.1 and 2 from alienating the suit land but the lower Appellate Court as noticed above, reversed the judgment and decree of the trial Court.

Mr. Kewal Krishan, learned counsel appearing on behalf of the appellants-plaintiffs submitted that partition proceedings were passed at the back of the vendors of the plaintiffs and in their absence, therefore, would not have any binding effect. It is settled law that in partition proceedings, all the co-sharers are required to be impleaded, failing which the same shall be liable to be dismissed. Mutation was effected after 10 years in the year 2004 whereas the sale deed is of the year 2003 and at that time, there was no jointness. In such circumstances, the plaintiffs could not have been non-suited on the ground of not having made reasonable enquiry. No notice of partition proceedings was ever served upon plaintiffs and as well as their vendors. Rapat of 2000 and 2001 did not establish the possession,

therefore, there is gross illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. Assuming for the argument's sake though not admitted that mutation qua partition was effected after 10 years but the fact of the matter is that in view of the partition, the co-sharer who had not been a party, did not assail the said order in any of the proceedings including the present suit, owing to non-joinder. The record reveals that after the partition, possession was delivered to the respective co-sharers in 2000-2001 but the sale deed is of the year 2003. Plaintiffs, therefore, did not make reasonable enquiry with regard to possession by looking at the khasra girdawaries, which have also not seen light of the day. That could have been a clincher for forming an opinion whether there was a reasonable enquiry or otherwise. Since mutation does not confer any title, parties had already acted upon the partition, given separate possession and cultivating the land.

In such circumstances, the finding of fact and law arrived at by the lower Appellate Court cannot be said to be suffering from illegality and perversity, 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

January 15, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No