

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

RSA No.2259 of 2015 (O&M)

Date of decision: 10.09.2019

AMAR SINGH AND ORS

... Appellants

Versus

SANTOKH SINGH AND ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Amandeep S. Manaise, Advocate for the appellants.

Mr. Kuldip Sanwal, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against the judgment and decree dated 24.02.2015 passed by the Additional District Judge (A), Gurdaspur whereby appeal against judgment and decree dated 18.08.2012 passed by the trial Court dismissing suit of the plaintiffs/respondents for permanent injunction, was accepted with direction to prepare decree sheet.

Counsel for the appellants would contend that though the respondents/plaintiffs filed suit for permanent injunction restraining the defendants/appellants from forcibly interfering in peaceful possession of the respondents over land measuring 60 kanal 10 marlas, detailed in headnote of the plaint but the real dispute between the parties is only in respect of land measuring 6 kanal 9 marlas comprising khasra No.11//3/2. It is argued that the plaintiffs have claimed their right in the suit land on the basis of sale deeds dated 26.11.2009, 15.12.2009 and 12.01.2010 executed

by Makhan Singh, one of the co-sharers to the extent of 1/3rd share. It is further argued that the appellants filed a suit for permanent injunction against Makhan Singh on 06.10.2008 in which interim injunction was granted vide order dated 03.11.2008. Makhan Singh appeared in the witness box and made a statement that he would not alienate the land of specific khasra numbers and on the basis thereof, suit for injunction filed by the defendants/appellants was withdrawn on 18.05.2009. It is further submitted that the appellants filed an application for partition of the joint land in August, 2007 which was allowed by AC, Ist Grade, Gurdaspur vide order dated 24.09.2008. It is argued that the partition proceedings ultimately culminated in final partition and sanad taksim was issued by the competent revenue authority. According to counsel, on the basis of finality of the partition proceedings, proceedings for delivery of possession in respect of land which had fallen to the share of different co-sharers were conducted on 15.03.2010 wherein possession of land comprising khasra No.11//3/2(6-9) was delivered to the appellants/defendants. It is argued with vehemence that witnesses of the respondents/plaintiffs in their cross examination have admitted the factum of filing of partition proceedings and initiation of dakhil proceedings and copies of the documents in this regard were produced before the trial Court but the same were not taken into consideration by the first appellate Court for want of original documents and proving the dakhil proceedings in accordance with law. It is further submitted that the judgment and decree passed by the Court in appeal may

be set aside and the matter be remitted to the first appellate Court for decision of the appeal afresh with an opportunity to the appellants to prove copies of documents in respect of partition proceedings and delivery of possession in accordance with law.

Counsel for the respondents/plaintiffs, on the contrary, has supported impugned judgment and decree with the submission that since the appellants failed to adduce evidence that possession of the aforesaid disputed khasra number was delivered to them on 15.03.2010, the first appellate Court has rightly set aside the judgment and decree passed by the trial Court. It is further argued that witnesses examined by the respondents were not confronted with the documents in respect of partition proceedings or delivery of possession and in absence of those documents being proved in accordance with law, the trial Court wrongly relied upon the marked documents to negate plea of the respondents/plaintiffs in respect of their entitlement to seek injunction in respect of the disputed khasra number.

I have heard counsel for the parties, perused the paper book particularly the judgments passed by the Courts.

Indisputably, in view of submissions made by counsel for the appellants, appellants were not in possession of land comprising khasra No.11//3/2 (6-9) prior to 15.03.2010. The suit was instituted by the respondents/plaintiffs on 20.03.2010. There is no dispute between the parties with regard to purchase of land by the respondents vide aforesaid sale deeds dated 26.11.2009, 15.12.2009 and 12.01.2010 from Sh. Makhan

Singh, one of the co-sharers to the extent of 1/3rd in joint khewat. The appellants failed to prove the documents in respect of partition of the joint land in order to substantiate their plea that land comprising khasra No.11//3/2 (6-9) had fallen to their share much less to establish that possession of land of said khasra number was actually delivered to the appellants in execution of the partition order. That being so, the Court in appeal has rightly refused to accept contention of the appellants in respect of their possession qua the disputed khasra number on the basis of alleged dakhla proceedings on 15.03.2010. In this view of the matter, I do not find an error much less illegality in the impugned judgment that would call for intervention.

So far as plea of appellants that the matter be remitted to the first appellate Court for decision of the appeal afresh, the same is highly misconceived and liable to be rejected. The appellants did not file application for additional evidence making out a sufficient ground that the case falls within the purview and ambit of Order 41 Rule 27 Clause (a) or (aa) of the Code of Civil Procedure.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

10.09.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No