

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

RSA No.2698 of 2015 (O&M)

Date of decision : 30.01.2019

Ajaib Singh (deceased) through his LRs

...Appellant(s)

Versus

Surinder Kaur Dhillon @ Shalinder Kaur Dhillon and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Mann, Advocate for the appellants.

Mr. Malkeet Singh, Advocate for respondent Nos.1 to 3.

Mr. R.D. Rattewal, Advocate for respondent No.6.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1 through his legal heirs is in the Regular Second Appeal against the judgments passed by both the Courts below while passing a preliminary decree for partition.

Learned counsel for the appellant(s) has pointed out that in para 17 of the judgment, learned trial Court has found that defendant No.1 is co-owner to the extent of half share and the plaintiffs have already sold their share in khasra No.776/240 and they are not left with any share therein. However, while concluding in para 21 of the judgment, the Court has concluded that defendant No.1 is entitled to separate his share to the extent of half share in the suit property except in the property comprising in khasra No.776/240, although, it is the plaintiffs who have sold their share. Learned

counsel points out that there is apparent conflict in the findings in paras 17 and 21 of the judgment passed by the trial Court which are extracted as under:-

“17. Perusal of jamabandi Ex.P3 would reveal that plaintiff no.1 Surinder Kaur, Plaintiff No.2 Avtar Singh, plaintiff no.3 Sukhdev Singh, defendant no.2 Didar Singh and defendant no.3 Jagir Kaur, all legal heirs of Mohinder Singh, are owners to the extent of ½ shares out of said khasra numbers, whereas, Ajaib Singh son of Dalip Singh, defendant no.1 is owner to the extent of ½ share out of said khasra number. Admittedly, the plaintiffs have sold their 3/10 share out of khasra No.776/240 to defendant no.4 and regarding this, mutation has already been sanctioned bearing No.2059. In this way, it is clear that plaintiffs are having no share in khasra No.776/240, whereas, plaintiffs have ½ share in the remaining suit property along with defendants nos. 2 and 3.

xxx xxx

21. In view of my findings on the above said issues, the suit of the plaintiffs succeeds the same is, hereby, partly decreed. A preliminary decree, is hereby passed holding that the plaintiffs are entitled to separate their share to the extent of 3/10, whereas the defendants Nos.2 and 3 are entitled to separate their share to the extent of 1/10 share each, whereas, defendant no.1 is entitled to separate his share to the extent of ½ share in the suit property except in the property comprising in khasra No.776/240. Un-exhibited documents and undisbursed diet money be returned to the party concerned. Decree-sheet be drawn accordingly and file be consigned to the Record Room, Phillaur, after due compliance.”

Appeal filed against the aforesaid judgment has also been affirmed.

The partition of the land comprised in various khasra numbers, which are part of khewat No.147, was sought. Partition has to be with respect to entire khewat. There is no finding of the Court that defendant No.1-appellant has sold any share out of khasra No.776/240.

Accordingly, the error in the judgment passed by the trial Court as well as by the Appellate Court is corrected. Defendant No.1 shall be the owner to the extent of half share in the entire suit land including khasra No.776/240.

In view of what has been observed above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

30.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No