

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5223 of 2014(O&M)

Date of Decision: February 4th, 2019

Jaspal Singh

---Appellant

vs.

Gurdas Singh Waraich

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amit Jain, Advocate
for the appellant

Mrs. Satwant Waraich, Advocate
for the respondent

Rekha Mittal, J.

CM No. 12324-C of 2014

Allowed as prayed for. Delay of 12 days in refiling the appeal stands condoned.

Disposed of accordingly.

RSA No. 5223 of 2014

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed by the plaintiff-appellant for declaration and consequential relief of permanent injunction was dismissed by the trial court vide judgment and decree dated 16.5.2012 and the plaintiff remained unsuccessful before the first appellate

court.

The facts relevant for disposal of present appeal are that as per case set up by the appellant-plaintiff, land measuring 8 kanals, detailed in head note of the plaint and marked in the site plan, situated in village Gohawar Tehsil Phillaur, District Jalandhar is owned and possessed by the plaintiff. The said land is part of khasra numbers, detailed in head note of the plaint and described in jamabandi for the year 2001-02. Surinder Kumar son of Amir Chand resident of village Chachoki, Tehsil Phillaur was owner of land measuring 4 kanals out of rectangle No. 22/12, 19,20 and rectangle No. 51//16 and 52//8/2, 13, 21, 22/1, 23 and 67//1/1, 2/1 and sold the same to the appellant vide sale deed dated 24.4.2000 and delivered possession thereof to the plaintiff. Similarly, Surinder Kumar and Narinder Kumar sons of Amir Chand were owners of plot measuring 4 kanals out of rectangles, detailed in para 2 of judgment of the trial court and sold the same to plaintiff vide sale deed dated 24.4.2000 and delivered possession thereof to the plaintiff. Since then, plaintiff is owner in possession of suit property and defendant has got no right, title or interest in the same. The plaintiff has constructed a boundary wall and installed a gate therein. In the first week of February 2006, the respondent came to the site in dispute and attempted to take forcible possession. On enquiry, the respondent asserted that he has got partitioned the property in dispute alongwith other land and property in question has been allotted to him. It is further averred that no partition ever took place between the plaintiff and defendant and defendant was not even a co-sharer. The appellant made enquiry from revenue records and came to know that mutation No. 5400 has been illegally entered with regard to

alleged partition and further came to know that defendant moved an application in the Court of Tehsildar-cum-A.C.Ist Grade, Phillaur. The partition application was filed by suppressing material facts. As the land in dispute is not agricultural land, Tehsildar had no jurisdiction to effect the partition. The appellant assailed order dated 20.9.2005 qua partition inter alia on the grounds, detailed in sub paras (a) to (c) of para 2 of judgment of the trial court.

The respondent-defendant filed the written statement and raised preliminary objections inter alia that civil court has no jurisdiction to entertain the present suit; suit is not maintainable; the plaintiff has not complied with Order 7 Rule 14 of the Civil Procedure Code; plaintiff has no locus standi to challenge partition order dated 20.9.2005; suit is bad for non-joinder of necessary parties; the plaint does not disclose any cause of action and suit for declaration is not maintainable; the original sale deeds dated 24.4.2000 have been withheld and plea that these are not traceable has been concocted by the plaintiff. In fact all the co-owners have colluded with the colonizers to withhold their respective sale deed to harass the defendant. Surinder Kumar and Narinder Kumar, vendors of plaintiff were not owners of land which they have allegedly sold to the plaintiff. They were not in possession of land and no possession was delivered to the plaintiff. Property of 51 co-sharers is included in the suit property but the said persons have not been joined. Out of 70 kanal 1 marla of land, revenue authorities separated 35 kanals land of defendant vide order dated 20.9.2005. The plaintiff is liable to pay Rs. 10,000/- per month as damages for mental torture, harassment and illegal use and occupation of 4 kanals of

agricultural land from April 2006 upto restoration of possession to the defendant. The suit property is agricultural land and the same is irrigated with tube well. The land allotted to the answering defendant is agricultural land and he got it separated by partition from land of the plaintiff and his predecessor-in-interest. All other material averments of the plaint have been denied with a prayer for dismissal of the same.

The appellant filed replication reiterating his stand taken in the plaint while controverting the preliminary objections raised by the defendant.

The controversy between the parties led to framing of following issues:-

1. Whether the plaintiff is entitled for declaration as prayed for?

OPP

2. Whether plaintiff is entitled for permanent injunction as prayed for ?OPP

3. Whether this court has no jurisdiction to entertain the present suit? OPD

4. Whether suit is not maintainable in the present form? OPD

5. Whether plaintiff has got no locus standi to file the present suit? OPD

6. Whether suit is bad for misjoinder and nonjoinder of necessary parties?OPD

7. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. They adduced evidence, noticed in paras 6 and

7 of judgment of the trial court. Having heard counsel for the parties in the light of pleadings and evidence on record, the trial court answered issues No. 1 to 3, taken up jointly, against the plaintiff and eventually the suit was dismissed. The appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge (Ad hoc) Fast Track Court, Jalandhar and resultantly findings of the trial court on all the issues were affirmed.

Counsel for the appellant has challenged consistent findings of the courts primarily on two grounds. The first submission made by counsel is that as the appellant was not impleaded as a party in application for partition filed in July 2000 despite his having become co-owner of land, subject matter of partition proceedings, vide sale deeds dated 24.4.2000 executed prior to filing of application, order of partition is vitiated for want of providing an opportunity of hearing to the appellant in compliance with the principles of natural justice. It is further argued that as the appellant was not impleaded as a party in the application for partition, no notice of the same was issued to the appellant but strangely in the order of partition, there is reference to the appellant being one of the co-owners of joint land. In addition, it is argued that if at the final stage of partition it had come to notice of the revenue authorities that the appellant is also one of the co-sharers in the joint land, it was obligatory for them to provide an opportunity of hearing to the appellant before finalizing partition proceedings and allotting the land purchased by the plaintiff in favour of defendant-respondent.

Another submission made by counsel is that as the land which

was purchased by the plaintiff vide two sales deeds dated 24.4.2000 executed by Surinder Kumar and Narinder Kumar, detailed in the plaint, certified copies whereof have been produced on record is gair mumkin land, the revenue authorities have no jurisdiction to partition gair mumkin land. It is further argued that gair mumkin land was not excluded from partition despite directions issued by the Commissioner, Jalandhar Division, Jalandhar.

Counsel representing the respondent, on the contrary, has supported consistent findings recorded by the Courts with the submission that judgments and decrees passed by the courts do not suffer from an illegality much less perversity warranting intervention in the regular second appeal. It is argued that the courts have rightly held that jurisdiction of the civil court to examine an order of partition is expressly barred under Section 158 of the Punjab Land Revenue Act. The present litigation was initiated by the appellant in collusion with other co-sharers in order to deprive the respondent to enjoy fruits of land owned by him.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the plaintiff purchased 8 kanals of land comprising various khewats on the basis of sale deeds dated 24.4.2000 Exs. P2 and P3 executed by Surinder Kumar and Narinder Kumar, co-sharers in the joint land. Surinder Kumar and Narinder Kumar were impleaded as parties in the application for partition filed by the respondent in July 2000. No doubt, mutation on the basis of sale deeds Exs. P2 and P3 was not sanctioned in favour of the appellant before the application for partition was

filed by the respondent. Counsel for the respondent has failed to refer to any rules/legal provision which debars the plaintiff of an opportunity of being heard in the partition proceedings merely because mutation on the basis of sale deeds was not sanctioned in his favour prior to partition proceedings were initiated by the respondent. On the contrary, once a sale deed is registered by the concerned registering authority, it is his obligation to send a copy of the registered sale deed to the concerned revenue authority for entering mutation on the basis thereof. In this view of the matter, as the appellant had become co-sharer in the joint land, he was required to be heard in the matter before he is made to suffer on the basis of partition order dated 20.9.2005 on the basis whereof mutation No. 5400 was sanctioned.

The Appellate Court has rejected claim of the appellant on three grounds namely previous owner from whom the appellant purchased the property i.e. Narinder Kumar and Surinder Kumar were party to the partition proceedings and appellant has entered foot steps of those owners. Revenue officials many a times visited the spot and even if the appellant was not made a party on the array of respondents, it cannot be presumed that despite the partition proceedings having remained pending for long time it had not come to notice of the plaintiff, therefore, the appellant should have filed an application for impleading him as a party. The third reason that weighed in the mind of Appellate Court is that after the mutation was sanctioned regarding purchase of property by the appellant, at the final stage a share has been allotted to him that finds reference in sanad taksim placed on record. The plea of appellant that land purchased by him is non-

agricultural has been rejected by relying upon entries in the jamabandi for the year 1996-97 on the basis whereof, the application for partition was filed.

The findings of the Appellate Court that the appellant has entered into foot steps of Narinder Kumar and Surinder Kumar might have been accepted, had sale in favour of the plaintiff been made during pendency of partition proceedings. As in the case at hand, appellant became one of the co-owners on the basis of sale made by other co-owners of joint land before application for partition was filed, it is difficult to uphold findings of the Appellate Court that the plaintiff was not required to be heard in the matter as his vendors were party to the partition proceedings.

The court, on the basis of presumption has held that appellant must have come to know about pendency of partition proceedings, therefore, he was obligated to file an application for impleading as a party, if he so desired to be heard in the matter. The Appellate court has not rejected plea of the plaintiff that he had raised a boundary wall around the purchased property and he is not cultivating the land. If the plaintiff is not cultivating the land purchased by him, there was no occasion for him to know about visits of revenue officials at the spot. However, it has not been proved that the appellant was present at the time of any such visit of revenue officials much less he was apprised about purpose of the visit. On the contrary, if the revenue officials during their alleged visits at the spot had acquired knowledge of plaintiff having purchased a part of joint land, it was for the revenue authorities to suo moto implead the plaintiff as a party in the partition case. In this view of the matter, findings of the Appellate

Court with regard to appellant having gained knowledge of partition proceedings are based on conjunctures, surmises and presumptions but without any factual background, therefore, unsustainable.

The fact that the appellant has been allotted a share at the final stage i.e. in the sanad taksim would not take away his right to be heard in the partition proceedings and press for allotment of land asserted to be in his exclusive possession. No favour has been extended to the appellant by allotting a share because he being one of the co-owners is certainly entitled to a share in the joint land as and when partitioned legally and validly. In this view of the matter, the reasoning adopted by the Appellate Court to negate plea of the appellant that partition order is liable to be set aside for non-compliance of principles of natural justice cannot stand the test of judicial scrutiny. The mere fact that the plaintiff was not made a party in the partition proceedings thereby deprived of an opportunity of being heard ipso facto is a ground to set aside the partition order dated 20.9.2005.

So far as plea of the appellant that land purchased by him is gair mumkin, therefore, cannot be partitioned by the revenue authorities, the same is left open to be examined by the concerned revenue authority, if an application is filed by any of the co-sharers for revival of partition proceedings.

With regard to civil court's jurisdiction is barred under Section 158 of the Punjab Land Revenue Act, as the order of partition has been passed without impleading the appellant as a party thus depriving him an opportunity of being heard in violation of principles of natural justice, the

civil court has the jurisdiction to examine such an order. In this context, reference can be made to Full Bench judgment of this Court **State of Haryana and others vs. Vinod Kumar and others 1986(1) PLR 222**. In this view of the matter, findings of the courts on issue No. 3 are liable to be set aside and ordered accordingly.

In view of what has been discussed hereinbefore, the appeal is allowed: judgments and decrees passed by the courts are set aside and suit filed by the plaintiff is partly decreed to the effect that partition order dated 20.9.2005 is illegal, null and void, thus, set aside. However, it is clarified that the respondent or any other co-sharer of joint land would be at liberty to file an appropriate application before the revenue authorities for revival of partition proceedings. In case such an application is filed, the same shall be decided after impleading the appellant as a party thereto, in accordance with law. In the peculiar facts and circumstances, the parties are left to bear their own costs.

(Rekha Mittal)
Judge

February 4th, 2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No