

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

RSA No.2330 of 2018(O&M)
Date of Decision: 04.04.2019

Jagjit Singh and anotherAppellants

Versus

Jasvir Singh and others**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.S. Kotli, Advocate and
Mr. J.S. Khiva, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Plaintiffs/appellants have preferred this regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration.

[2]. Plaintiffs filed a suit for declaration to the effect that they are co-sharer as owner of $\frac{2}{36}$ th share of land measuring 148 kanals, 15 marlas and $\frac{2}{36}$ th share of land measuring 113 kanals, 2 marlas as shown in the headnote of the plaint. Plaintiffs claimed that plaintiffs and defendants No.23 and 24 filed an application before the Assistant Collector 1st Grade

(Tehsildar), Mansa and Naksa Bai was accepted on 12.05.2010. An appeal was preferred by the plaintiffs before the Collector, Sub Division Mansa against the order dated 12.05.2010 and the same was dismissed on 10.10.2012. Plaintiffs sought restraint against taking possession by defendants No.1 to 22 under the garb of order dated 12.05.2010 passed by Assistant Collector Ist Grade (Tehsildar), Mansa.

[3]. The suit was contested by defendants No.1 to 5, 6, 7 and 9 by filing joint written statement. Defendants submitted that the land has already been partitioned and the shares of the plaintiffs have been separated. Revenue Court had conducted partition proceedings in accordance with law after affording full opportunity of hearing to the parties. Defendants No.20, 21 and 22 also contested the suit on the same lines. The suit was claimed to be bad on account of concealment of material facts, estoppel and all other grounds.

[4]. After filing replication by the plaintiffs, both the parties went to trial on the following issues:-

- “1. Whether plaintiffs are entitled to decree for declaration as prayed for? OPP*
- 2. Whether suit of the plaintiffs is not maintainable in the present form? OPD*
- 3. Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD*
- 4. Whether this Court has got no jurisdiction to try the*

suit? OPD

5. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of parties? OPD

6. Relief.”

[5]. Plaintiffs after examining Jagjit Singh (plaintiff No.1) as PW 1, tendered certified copies of mutations Exs.P1 to P3 and *jamabandi* for the year 2017-18 as Ex.P4 and thereafter, closed their evidence. Defendants did not lead any evidence and their evidence was closed by order.

[6]. On the basis of order dated 12.05.2010 passed by Assistant Collector Ist Grade (Tehsildar), Mansa, trial Court found that the plaintiffs have miserably failed to prove their case. Order dated 12.05.2010 passed by Assistant Collector Ist Grade (Tehsildar), Mansa could not be proved to be illegal, null and void, rather plaintiff No.1 himself has admitted in his cross-examination that the Assistant Collector Ist Grade (Tehsildar), Mansa conducted partition proceedings fully in consonance with law. Even the appeal filed against the said order was dismissed by the Collector, Sub Division Mansa, Challenge to the partition proceedings has not been made in the suit.

[7]. In case of partition of agricultural land, Civil Court jurisdiction is barred under Section 158 of the Punjab Land Revenue Act. The only interference by the Civil court can be made if while partitioning the property, principles of natural

justice are violated. No such case has been set up by the plaintiffs, nor any evidence was led to that effect. The factum of order dated 12.05.2010 passed by Assistant Collector Ist Grade (Tehsildar), Mansa has been admitted.

[8]. Since there is no challenge to the partition proceedings, nor averments to that effect have been made in the suit, the suit has been found to be totally devoid of merits by both the Courts below. Plaintiffs could not demonstrate as to how the findings recorded by the Courts below are the result of misreading of evidence or suffered with any perversity. No question of law worth consideration is involved in the present appeal. The appeal is found to be totally devoid of merits and is accordingly dismissed in *limine*.

[9]. Since the main appeal has been dismissed in *limine*, therefore, there is no necessity to pass any order in the application for condonation of delay of 90 days in re-filing the appeal. All other applications are accordingly disposed of.

04.04.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No