

RSA No. 3452 of 2018 (O&M)

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

RSA No. 3452 of 2018 (O&M)

Date of decision: 08.11.2019

Sahab Singh (now deceased) through LRs and others

... Appellants

Versus

Gurnam Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Vineet Chaudhary, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff-appellants was dismissed by the trial court, vide judgment and decree dated 2.11.2011, and as even the appeal preferred against the said decree failed and was dismissed on 7.10.2014, they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that a land measuring 73 bighas, total kitta-28, situated in village Saddopur, Tehsil and District Ambala, comprised in specific khasra numbers as depicted in the cause title of the plaint, was ancestral in nature and, a land measuring 75 bighas 11 biswas, total kitta 25, situated in village Saddopur, Tehsil and District Ambala, was purchased by the family of the plaintiffs and defendants No. 1 to 13, vide sale deed dated 27.5.1953. The said properties were still joint and had not been partitioned. Further, orders dated 4.3.1993, passed by the

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Assistant Collector 2nd Grade; 24.2.1994 passed by the Collector; 24.8.1994 passed by the Commissioner; 14.1.1997 passed by the Financial Commissioner, and order dated 6.12.2000 passed by this Court, were wrong, illegal, void, and ineffective qua the rights of the plaintiffs. Further, the sale deed dated 20.2.1997 executed by defendants No. 5,7,8 and 9 in favour of defendant no. 14, and a sale deed dated 22.11.1999 executed by defendants No. 3 and 4 in favour of defendant No.15 were illegal and ineffective qua their rights.

In brief, the case set out by the plaintiffs was that they, along with defendants No.1 to 13, were members of a joint Hindu Family, and the suit property, as depicted in the head note of the plaint, was still joint between the parties. Plaintiffs, along with defendants No. 12 and 13, had filed a partition application before Assistant Collector 2nd Grade, which was dismissed and the said order was affirmed right up to High Court. Thus, in the absence of any partition deed or an order passed by the competent court of law, it could not be presumed that the joint khata had since been partitioned amongst the co-sharers. Thus, the suit.

In the written statement filed by defendants No. 1 to 4 and 6, jurisdiction of the civil court to try the suit was disputed. It was maintained that defendants No.1 and 2 had no concern with the plaintiffs, as they had been living separately. Further, the suit land was partitioned in 1950 and since then, parties were in cultivating possession of their respective holdings. The land purchased, pursuant to a sale deed dated 27.5.1953, was, in fact, mortgaged with the parties with possession and was divided as per their respective shares in the year 1950 itself. Mutation Nos. 251 and 252 were rightly sanctioned adhering to the procedure. Thus the suit was liable to

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be dismissed.

In a separate written statement filed by defendant No. 12, the suit property was alleged to be joint. Further, the land measuring 73 bighas was never partitioned amongst the co-sharers. The parties were in separate possession on the spot. Thus, the suit was liable to be dismissed.

Defendant No.15, in her written statement, claimed that she had purchased the land measuring 9 bighas 4 biswas, vide sale deed dated 26.11.1999, and the same was mutated in her favour. For, she was a bonafide purchaser for consideration, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that dispute as regards partition of the suit property had already been finally adjudicated by the revenue authorities as back as in the year 1950. Further, the plaintiffs had filed partition application before the revenue court, which was dismissed by the Assistant Collector, vide order dated 4.3.1993 (Ex.P3), and the appeal against the said order was dismissed by the Collector on 24.2.1994 (Ex.P4). Whereafter, even the revisions were dismissed by the Commissioner, vide order dated 24.8.1994 (Ex.P6) as also the Financial Commissioner on 14.1.1997 (Ex.P10), respectively. Not just that, the writ petition preferred before this Court was also dismissed on 6.12.2000. Even otherwise, though the plea set up by the plaintiffs was that the suit property was still joint and had not yet been partitioned, but they failed to adduce any evidence in this regard. Further, it was a conceded position that almost all the properties in dispute had since been sold out. Therefore, it was not understandable as to for what the plaintiffs had filed the present suit. This was not their case either that orders that were being assailed, passed by the revenue authorities,

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were without jurisdiction or were passed without affording opportunity of hearing to the plaintiffs. Further, the proceedings before the revenue authorities were well within the knowledge of the plaintiffs as they were parties thereto and also the writ petition that was dismissed by this Court, vide order dated 6.12.2000. Therefore, the present suit filed on 7.3.2005 was even time barred. Once the partition proceedings had already attained finality and there was nothing on record to point out that orders passed by the revenue authorities were without jurisdiction, the plaintiffs could not re-agitate the issue. Thus, the only and the inevitable conclusion that could be reached: suit was liable to be dismissed.

Upon being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 08, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO