

RSA-4139-2017 (O&M)

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

RSA-4139-2017 (O&M)

Date of decision : 09.05.2019

Gurtej Singh

... Appellant

Versus

Labh Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Khurana, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

CM-10726-C-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 138 days in re-filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The short point involved in the present regular second appeal is whether the Civil Court would have the jurisdiction to pass a preliminary decree, in respect of land, reflected in the revenue record as *abadi deh* or the Revenue Court, in view of the provisions of Section 158 of the Punjab Land Revenue Act, 1887 (in short 'the 1887 Act').

Mr. Khurana, learned counsel appearing on behalf of the appellant-defendant submitted that the jointness amongst the co-sharers is not in dispute as the jamabandi reflected to be *gair mumkin*. It will not take away the character of the property as agricultural land, as, for *abadi deh*, the field numbers are allocated and maintained in the field book. In support of his contentions, relies upon the decision dated 19.08.2011, of this Court rendered in **CWP No.2619 of 2010** titled as **“Raghbir Singh and others V/s State of Haryana and others”**.

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I am afraid the aforementioned argument is not sustainable as the appellant-defendant has not discharged the onus by placing on record the khasra girdawairs, if it was agricultural land. It is, over a period of time, agricultural lands, become the *abadi deh* and *gair mumkin*, owing to increase of *lal dora* or the municipal limits. No such evidence has been placed on record.

The Division Bench of this Court in **“Surjit Singh V/s Financial Commissioner Appeals-II, Punjab and others” 2012 (5) RCR (Civil) 683**, by relying upon the provisions of Sections 111 and 158 (2) of the 1887 Act, dealt with the similar controversy and held that where plots carved out and houses constructed on agricultural land, the remedy would be of a Civil Court and not of a partition. For the sake of brevity, para Nos.8 to 10 of the judgment read as under:-

"8. After considering the submissions made by the counsel for the appellant, we do not find any force in the same. It is uncontroverted fact that after filing the partition application, the appellant himself has carved out plots on the land in their possession for residential purposes on which construction has been raised by the purchasers. This factum of large scale construction in and around the land in dispute and construction of roads and houses on the plots carved out has been confirmed by the Local Commissioner. Undisputedly, the subsequent development had taken place before the final order of partition was passed. Initially, at the time of confirmation of the mode of partition, the respondent raised objections in this regard.

9. It is true that the agricultural land, which is part of an estate, which has been defined under the Land Revenue Act, cannot be partitioned by the Civil Court in view of Section 158 (2) of the said Act. But, when the agricultural land before

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partition loses its nature as such by the acts of the parties, particularly, who is seeking partition, then such land cannot be partitioned by the revenue Court. During the partition before the Revenue Officer, a co-sharer can raise an objection that the land, which has been shown in the revenue record as agricultural and assessed to land revenue, should not be partitioned as the same due to the acts of the other co-sharer, who is seeking partition, loses its nature as an agricultural land. Exactly this thing has happened in the present case and by taking into consideration the subsequent development and the acts of the appellant himself, the revenue Court refused to partition the land with liberty to the appellant to seek the remedy of partition before the Civil Court. In Auja Singh's case (supra), cited by the learned counsel for the appellant, some observations have been made by the Division Bench of this Court which do not support the case of the appellant, rather those observations support the case of the respondent. These observations read as under:-

“No doubt, if a particular property is a abadi land and does not fall under the definition of land, the revenue authorities have no jurisdiction to partition the same but in this case, there is no evidence to prove that at the time the land in dispute was ordered to be partitioned by the Revenue Officer, it was abadi land and was not agricultural land. The order of partition was passed by the Revenue Officer on 22.9.1970, Exhibit D11. The suit land at that time was entered in the revenue papers and it was assessed to land revenue. So, apparently the Revenue Officer, who partitioned the land, had the jurisdiction to partition the same and as such, the order of partition is valid. Before this order could be held to be invalid, the plaintiff, we think, was required to produce evidence which could show that at the time the order of partition was passed, the suit land was not

being used for agricultural purposes, but was being used as abadi land. There is, however, no evidence in this behalf nor any such evidence was referred to by the learned counsel for the appellant. Learned counsel for the appellant/plaintiff has simply tried to press into service the written statement filed by defendant No.1. No doubt, defendant No.1 in his written statement alleged that the installations and structures on the suit land raised by defendant No.1 were existing for the last 20 years, but this averment made by defendant No.1 was not binding on defendant No.2 who had raised the plea that the suit land had already been partitioned. So, qua defendant No.2, the plaintiff cannot take advantage of any averment made in the written statement filed by defendant No.1. The plaintiff was required to produce some evidence which could show that at the time the suit land was ordered to be partitioned, it was no more an agricultural land, but was being used as abadi land.”

(Emphasis Added)

10. In view of the aforesaid observations made by the Division Bench, in our opinion, in the instant case the revenue authorities were fully justified while coming to the conclusion that with the subsequent wide constructions raised, the land in dispute cannot be partitioned by the revenue Court. By the impugned order, the revenue Court has specifically given liberty to the appellant to seek his remedy for partition of the land before the Civil Court. Therefore, the appellant is not remediless. If he feels that the co-sharers have unequal possession of the joint land or some portion of the land property has not been given the passage, he is not remediless. He can approach the Civil Court for seeking partition. Since the revenue Court itself has held that the appellant can approach the Civil Court, the bar created by Section 158(2) of the Land Revenue Act will not come in the way of the

appellant."

However, there is no dispute to the ratio decidendi culled out by the judgment relied upon by Mr. Khurana, but it was a case, where the land, in the scheme of consolidation, was reserved as *abadi* and was extended as well as the allotment was also of the *baras*, in such circumstances, the said *ratio decidendi* would not apply, ousting the jurisdiction of the Civil Court.

The alleged family settlement cannot also be looked into, for, no such entries are recorded in the revenue record i.e. jamabandi accepting the aforementioned partition.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Khurana, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

09.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No