

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

1. R.S.A. No. 741 of 2017

Sawinder Singh ...Appellants

Versus

Mukhtiar Singh and ors. ...Respondents

2. R.S.A. No. 1814 of 2017

Balwinder Singh ...Appellants

Versus

Mukhtiar Singh and ors. ...Respondents

Date of decision:- 05.08.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. G.S. Nagra, Advocate
for the appellant in RSA No. 741-2017.

Mr.Amit Arora, Advocate
for the appellant in RSA No. 1814-2017.

Mr. Bikramjit Aurora, Advocate
for respondent Nos. 1 to 3

Mr. D.K. Gupta, Advocate
for respondent No. 28 in RSA No. 741-2017

Mr. S.S. Chauhan, Advocate
for respondent No. 12 in RSA No. 741-2017

RITU BAHRI J.

This order shall dispose of the above two appeals as the above appeals have been filed against concurrent finding of fact recorded by both the Courts below whereby suit filed by plaintiff/respondent Nos. 1 to 3 for declaration to the effect that they and defendant Nos.6, 7 and 9 are owners in possession of the suit land, has been decreed.

In brief the facts of the case are that Bhag Singh, father of the plaintiff No. 1 Mukhtiar Singh and Lakha Singh were co-sharer in the joint khata of suit land and they entered into oral partition with Pal Singh and Sawinder Singh, Balwinder Singh and other co-sharer of said joint khata and as per oral partition, the land measuring 35k-7M marlas and land measuring 110 K i.e suit land fell into the share of Bhag Singh, Mukhtiar Singh, Lakha Singh and they became owner in possession of the suit land. Pal Singh, Sawinder Singh, Balwinder Singh resiled from the land portion of the joint khata of land measuring 287 k Bhag Singh, Mukhtiar Singh, Lakha Singh sons of Puran Singh filed a suit for declaration of suit land against Pal Singh, Sawinder Singh, Balwinder Singh bearing suit No. 39/1983 instituted on 15.0.83 decided on 25.5.84, which was decided on the basis of compromise Ex C1 as per oral partition. The said Bhag Singh, Mukhtiar Singh, Lakha Singh sons of Puran Singh then became owners in possession of the suit land. Bhag Singh had died leaving behind Mukhtiar Singh, Kaha Singh as his son and Smt. Santo his widow as his heirs. Santo has died leaving behind her legial heirs Bhupinder Singh, Kulwinder Singh, Ranjit Singh sons of Mukhtiar Singh and Hira Singh, Randhir Singh @ Dhira Singh sons of Lakha Singh, her grand sons as her only heirs. After the death of Bhag Singh and Santo, Mukhtiar Singh, Ranjit Singh sons of Mukhtiar Singh and Hira Singh, Dhira Singh, Randhir Singh sons of Lakha Singh inherited their estate being legal heirs as such the plaintiffs and defendant Nos. 6, 7 and 9 became owners in possession of the suit land. Balwinder Singh filed two partition applications in respect of total joint khata of land measuring 285 k 7M and as mentioned in copy of jamabandi for the year 2005-06 situated in revenue estate of village Khadur Sahib

before AC I Khadur Sahib Distt Tarn Tarn which was decided on 02.03.2011. Plaintiff and defendant Nos. 6, 7 and 9 are in peaceful possession of the suit land as owners. Defendants Nos. 1 and 2 on the basis of above order dated 02.03.2011 are now threatening to dispossess the plaintiffs from peaceful and lawful possession of the suit land.

On notice of the suit, defendant No. 2 appeared and filed his written statement submitting therein that plaintiffs challenged the partition order dated 22.03.2011 passed by Tehsildar cum AC Ist Grade Khadur Sahib in respect of land khewat No. 162, 163 and 164 but he did not include the land khewat No. 176 having land measuring 02 kanals 15 marlas, so far plaintiff require amendment. The judgment dated 25.05.1984 never recorded in revenue record. So the plaintiff had no right to challenge the partition order in the civil court on the basis of judgment and decree dated 25.05.1984. The plaintiff also filed an appeal against order of partition dated 22.03.2011 and the same was dismissed on 23.08.2011. The plaintiffs also filed revision in the Court of Commission Jalandhar. The plaintiffs did not challenge the order of SDM cum Collector Khadur Sahib which was passed prior to filing of this suit.

Replication was filed. From the pleading of the parties, the following issues were framed:-

- 1. Whether the plaintiff is entitled to relief of declaration decree as prayed in the head note of the plaint?OPP*
- 2. Whether the plaintiff is entitled to relief for permanent injunction as prayed in the head note of the plaint?OPP*
- 3. Whether the suit is time barred?OPD*
- 4. Whether the suit plaintiff is not maintainable?OPD*
- 5. Whether plaintiff is estopped by his own act and conduct from*

filing the present suit?OPP

6. Whether the present suit is not properly valued for the purpose of Court fee and jurisdiction?OPD

7. Whether the plaintiff has no cause of action to file the present suit ?OPD

8. Relief

Learned counsel for the appellant/defendant states that one application under Order 41 Rule 27 CPC had been filed giving details of the sale deeds made by the plaintiffs of the land out of the share of the defendants and this application has not been decided.

Learned counsel for the respondents-plaintiffs states that as per the details given in the grounds of the appeals, sales were made of the share of the property which fell in his share as per 1984 decree, which had attained finality after the civil suit filed by the defendant-Balwinder Singh had been dismissed and the sale deeds have no bearing on the final judgment passed with respect to 1984 decree.

After hearing learned counsel for the parties at length, the present appeals deserves to be dismissed, as in the present case the decree was passed on the basis of compromise, which was admitted by the parties. The properties allotted to each party were clearly specified and schedules of properties were appended to the compromise petition. The parties were in possession. The appellants are estopped from denying the right, title and interest declared by a competent civil Court through judgment and decree dated 25.05.1984 (Ex P1). Thus, the learned trial Court has rightly decreed the suit. The land sold by Bhag Singh will not have any effect over it, in view of judgment and decree dated 25.05.1984 (Ex P1), as it stood sold prior to the same. Further the compromise decree was challenged by the

defendant-Balwinder Singh in the civil suit for declaration which was also dismissed. The appeal against the same was also dismissed. The decree has attained finality. The defendants were aware of the judgment and decree dated 25.05.1984

Accordingly, the concurrent findings of facts recorded by both the Courts does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

05.08.2019
G Arora

(*RITU BAHRI*)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>