

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

R.S.A.No.1627 of 2020 (O&M)

Date of Order: 07.12.2020

Gurmeet Singh

..Appellant

Versus

Avtar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Randhawa, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing,
on account of restricted functioning of the Courts.

The appellant-defendant no.1 has filed regular second appeal
against the concurrent findings of fact, arrived at by the Courts below, while
decreeing suit for exclusive possession by way of partition of the property.

Some facts are required to be noticed.

The parties to this litigation are being referred to as per their
original status in the suit.

The plaintiff and defendant no.1 are brothers, whereas
defendant no.4 is their nephew (brother's son). The plaintiff filed a suit
seeking exclusive possession by way of partition with respect to property
comprised in Khasra No. 443/2, 263 and 264. The property, in these khasra
numbers, is part of constructed area. The plaintiff claimed that he has 1/6th
share in the property comprised in Khasra No.443/2, whereas 1/24th share in
the property comprised in Khasra Nos.263 and 264.

The defendants contested the suit and pleaded that the suit land had already been partitioned 50 years ago. It was further pleaded that subsequently on 13.08.2007, a family settlement/partition was arrived at, finally, partitioning the property inter-se amongst themselves.

After framing of the issues, learned trial Court decreed the suit which, as notice above, has been affirmed in appeal.

It may be noted that there is an undisputed writing between the parties executed on 13.08.2007. Learned counsel appearing for the appellant has produced a translation of the document Ex.D1, dated 13.08.2007. It is considered appropriate to extract the same:-

We Avtar Singh son of Atma Singh son of Niranjan Singh resident of village Mankheri, Tehsil Chamkaur Sahib District Rupnagar (First Party) and Gurmmet Singh son of Atma Singh son of Naranjan Singh and Bhupinder Singh Son of Amrik Singh son of Atma Singh resident of village Amrali, Tehsil Chamkaur Sahib District Rupnagar (Second Party).

That our mutual Property situated at village Amrali H.B.No.290 and Village Mankheri, Tehsil Chamkaur Sahib District Rupnagar which is to be partitioned mutually, which is yet to be arrived at. But we have agreed with out free Will, without any fear or pressure and keeping in view out respective loss or gain, to take out respective shares as follows for cultivation (ploughing and sowing).

*1. This property comprising of 27 Kanal 0 Marla whose boundary is in village Sidhupur kalan and is in between way (pahi) and road. Which is in Khasra no. 53//21/1, 22/1, 22/2, 21/2, 60//2/2 ,2/1, 1/1, 2/3, 3/1. **This land was given to the First party Avtar singh for cultivation purpose through mutual consent.** If property is less than 27 kanal in the above Khasra number then Rakba should be completed with well, motor from the west side of the land of Nachattar Singh. Way or road for roaming on this land and for water irrigation from water can be done by Avtar Singh. In which there is no objection from the side of second party. However according to mutually agreed decision if the above mentioned property is cultivated by Avtar singh, then the Second Party is*

responsible for irrigation facility from their well. But if Avtar Singh give above property on lease or sell it then neither water or tubewell will be given nor Avtar Singh will demand any motor tubewell connection.

2. That the remaining property in Village Amrali which is situated in Lutheri side below motor is given to the Second party through mutual decision. But Bhupinder singh (second party) will be the sole owner of the motor which is installed on that property. However according to the above conditions Bhupinder Singh cannot deny from giving water facility on that property Motor which is installed in Lutheri side of Village Amrali will be owned by Gurmeet Singh. And motor installed in the property in Village mnakheri will be owned by Avtar Singh.

3. That the property comprised of 19 kanal 3 Marla situated in Village Mankheri on which the Court case is still due but it was given to Avtar Singh First Party for cultivation purpose. If as per the decision of the case the part of land cut out from this land then the second party is bound to give the land adjoining to the land of Avtar singh in the equivalent share in order to complete his total share but if the land found One and Half acre in the Village Mnakheri then 1 acre land from Amrali will be given in which no party will have any objection.

4. That whatever house, BARA (courtyard for tethering cattle), GOHARA (mended heap of dung cakes) Abadi Dher (heap of animal dung) etc is at village Amrali besides the other properties have been left in equal shares to the second party of Bhupinder singh etc of which they will be owners.

5. That the property comprising 27 Kanal of Village Amrali which is given to Avtar Singh other than that Avtar Singh has received Rs 374000/- (Rupes Three Lac Seventy four Thousand Rupees Only) in account of Abadi Dher, Bada, Guhara, Machinery, Tractor, Sanda, Agriculture, Motor, Tubewell Room, Lease amount from the Second Party Bhupinder singh and others in front of below mentioned witnesses. After this Avtar Singh cannot demand any share in Tractor Motor etc Moreover He will neither deny for transferring or on giving lease of Motor or machinery or land nor he can demand any amount related to this.

6. That the parties will take possession of the said land for cultivation of which this agreement has been arrived at after harvesting of Sauni crop Both of the parties and

their Successors in interest shall remain bound this agreement If any of the party will not obliged with the above terms than the other party will have a right to enforce this agreement through the Court for which the party who denies the terms as well as the property of those persons will be for every type of expenses of the court and the defaulter party will be declared as liar in the Court and Panchayat. Defaulter party will also be bound to give Rs 10 lac to the other party. Therefore this agreement of mutual has been written so that it will work on time. 13.08.2007”

Note: The copy of this agreement is given to all the parties and the original document will be with the Sarpanch Gurdeep Kaur with all the free consent of the parties which can be presented when needed. 13.08.2007.

Avtar Singh (First party)

sd/-

Witness:-

*Smt. Gurdeep Kaur, Sarpanch
Puran Singh*

*Resident of vill. Amrali
Teh. Chamkaur Sahib
District Rupnagar*

sd/-

Witness:-

*Paramjeet Singh
Dedaar Singh
S/o Bachittar Singh
Mustfabad*

*Resident of vill. Amrali
Sahib
Teh. Chamkaur Sahib”*

Gurmeet Singh (Second party)

sd/-

Witness:-

Pritam Singh s/o

*resident of vill Amrali
Teh. Chamkaur Sahib
District Rupnagagr*

sd/-

Witness:-

Gurdeep Singh s/o

Resident of vill.

District Fatehgarh

In fact, the learned first appellate court has also extracted the aforesaid document in the vernacular.

Learned counsel, appearing for the appellant, has submitted that the suit was not maintainable as the plaintiff had only sought partial partition; the first appellate court has erred in overlooking this document on the ground that it required registration, as in fact, this is a document of family settlement and therefore, not required to be registered; the courts

have erred in returning a finding that it is not a final partition by overlooking Clause 4 and 5 of the document (Ex.D1).

After having heard learned counsel for the appellant at length, this court does not find substance in the appeal. On careful reading of the document (Ex.D1), extracted above, it is apparent that the parties had specifically written in unnumbered para 2, that this is not a document of partition, which is yet to be arrived at. However, this is only an arrangement for cultivation of the land, by the respective family members. Thus, the parties had kept the property joint, however, for the purpose of cultivation, they had earmarked separate parcels of land and handed over the possession of the same to the respective family members. Still further, in paragraph 1 and 3, it is specifically noted that the details of the land being given only for cultivation purposes. In paragraph 1, land measuring 27 kanals, details whereof, was given in the paragraph, was handed over to the plaintiff-Avtar Singh, for cultivation. Similarly, in paragraph 3, again 19 kanals 3 marlas land, situated in village Mankheri, was also given to Avtar Singh, for cultivation. Whereas, the possession of the land, in later part of paragraph 2, was handed over to defendant no.1 and 4. In view of the specific recital that the partition of the property would take place subsequently, it will not be appropriate to conclude that the entire property stood partitioned.

Now, the stage is set to examine the arguments of learned counsel for the appellant.

First argument of learned counsel, for the appellant, is with regard to the non-maintainability of the suit on account of partial partition. No doubt, the defendant has alleged that the property situated in 'Abadi, Dher, Gohara and Bara', located in village Amrali, has not been included,

however, the defendant has not produced any evidence to prove that the aforesaid property is still joint. Still further, from careful reading of paragraph 4 and 5, of the Ex.D1, the parties may have carried out final partition with respect to the property mentioned therein. Since, the partition of the property situated in 'Abadi, Dher, Gohara and Bara', is not in question, in the present case, therefore, it would not be appropriate to record any finding. However, for the purpose of disposal of the present appeal, it is sufficient to note that the defendant has not produced any material to prove that the parties were owners of some other property.

Next argument of learned counsel with regard to Ex.D1, having been ignored by the court, on the ground that it is not registered, is not factually correct. Learned first appellate court after noticing the arguments of learned counsel for the parties, has not ignored Ex.D1, on the ground that it is not registered. Rather the court has held that since it is not a deed of partition, therefore, it was not required to be registered. In this context, reference can be made to the findings in paragraph 26, of the judgment passed by the Ist appellate court.

Last submission of learned counsel, for the appellant, is with reference to Clause 4 and 5, of the family settlement dated 13.08.2007. As noted above, the property, referred to in paragraph 4 and 5, may have been finally partitioned, however, since the aforesaid property is not subject matter of the present suit, therefore, it would not be appropriate to return any final finding.

On careful reading of the document Ex.D1, it is apparent that the suit property is not even part of Ex.D1. The detail of the land, which had fallen to the share of Avtar Singh, has been specifically given. Still further,

once the parties have themselves written that the document is not a deed of partition but only an arrangement for allowing the respective family members to individually cultivate the land, therefore, the argument of learned counsel cannot be accepted.

No other argument was addressed by the learned counsel for the appellant.

In view of the aforesaid discussion, this court does not find any substance in the appeal.

Hence, the appeal is dismissed in limine.

07th December, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No