

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

1. RSA-2442-2015 (O&M)
Date of decision : 07.02.2020

Satbir and others

...Appellants

Versus

Hawa Singh (since deceased) through his LRs and others

...Respondents

2. RSA-4686-2015 (O&M)
Date of decision : 07.02.2020

Satbir and others

...Appellants

Versus

Hawa Singh (since deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sumit Sangwal, Advocate for the appellants.

Mr. S.S. Dinarpur, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.2442 and 4686 of 2015 shall stand disposed of. In a suit for permanent injunction, the defendants had filed a counter claim. The suit as well as counter claim have been decided by a common judgment passed by the trial Court as well as Appellate

Court. Counsel for the parties are also agreed that both the appeals can be conveniently disposed of by a common judgment. Counsel for the parties are also common.

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court while reversing the judgment of the trial Court in the suit filed for permanent injunction. RSA No.2442 of 2015 is arising from suit for permanent injunction whereas RSA No.4686 of 2015 is arising from dismissal of the counter claim filed by the defendants by both the Courts below.

The plaintiff had filed the present suit with following prayer:-

“It is, therefore, prayed that the suit of the plaintiff for permanent injunction (prohibitory) restraining the defendants from interfering into peaceful possession of the plaintiff over agricultural land measuring 11 bighas 4 biswa comprised in khewat No.27 min, khasra numbes 190//2(0-15), 292//2(0-9), 193//3(0-2), 194//2(8-8) and 214//2(1-10), total kitas-5, situated in the revenue estate of Laad Tehsil Dadri, District Bhiwani, as per jamabandi for the years 1985-86 and mutation No.437 of partition and also restraining the defendants from causing any damages to the crops sown in the land detailed above and also restraining the defendants from damaging the underground water pipe line underneath the lands passing from the tubewell of the plaintiff constructed on khasra number 194//2 from tubewell upto northern side of khasra number 194//2 via khasra number 194//3 belonging to the defendants and from tubewell towards western side via khasra number 194/1 belonging to the defendants upto

khasra number 188 belonging to the plaintiff and also to cause any kind of hindrance and blockage for irrigating lands of the plaintiff through the underground water pipes referred to above, may kindly be decreed with costs in favour of the plaintiff and against the defendants. Any other relief to which the plaintiff is found entitled during the trial of the suit may also be granted to him. ”

The plaintiff claims that the revenue authorities had partitioned the agricultural land in which land measuring 11 bighas 4 biswas comprised in khewat No.27 min, khasra No.190//2(0-15), 292//2 (0-9), 193//3(0-2), 194//2(8-8) and 214//2(1-10), had come to his share and, therefore, the defendants be restrained. Two separate written statements were filed by defendant Nos.1 and 2 and defendant Nos.4, 6, 10 and 11 alongwith a counter claim. In the counter claim, prayer is that mutation No.437 dated 15.02.1990 be declared illegal and set aside.

Learned trial Court, on appreciation of evidence, found that the plaintiff has failed to prove that he is in possession of the property in dispute referred to above. Learned trial Court also dismissed the counter claim filed by the defendants.

Two first appeals were filed, one by the plaintiff and second by defendant Nos.4, 6, 10 and 11. Learned First Appellate Court, has accepted the appeal filed by the plaintiff while dismissing the appeal filed by the defendants challenging dismissal of the counter claim. The appeal filed against the counter claim has also been dismissed.

That is how these two appeals have been preferred.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below as well as record.

Learned counsel appearing for the appellants has submitted that even if the partition between the joint owners is accepted, still, there is no evidence or record to prove that the possession of the suit land was ever delivered to the plaintiff. He further drew attention of the Court to Ex.D1, application dated 29.08.1988 filed by the plaintiff in the Court of Assistant Collector, IInd Grade, requesting for delivery of possession pursuant to deed of partition Ex.P33 which was dismissed in default vide order dated 10.01.1989 Ex.D7. Hence, he submitted that the plaintiff has failed to prove that he is in exclusive possession of the property peacefully.

On the other hand, learned counsel for the respondents has submitted that vide *sanad taksim* (deed of partition) Ex.P33, the suit land fell to the share of the plaintiff. He further drew attention of the Court to mutation No.437 dated 15.02.1990 Ex.P4 to contend that mutation of the land proves that the deed of partition has been implemented after delivery of possession.

This Court has analyzed the arguments of learned counsel for the parties.

In the considered view of this Court, following question of law arises for determination:-

a) Whether sanction of mutation after *sanad taksim* (deed/instrument

of partition), is evidence of delivery of possession or not, particularly when the application for delivery of possession filed, after preparation of the deed of partition, was dismissed by the Assistant Collector, IInd Grade?

At this stage, it would be relevant to note the provisions of the Punjab Land Revenue Act, 1887 concerning partition of the agricultural land, preparation of instrument of partition as also delivery of possession. Sections 121 and 122 of the Punjab Land Revenue Act, 1887, are extracted as under:-

*“121. **Instrument of partition** – When a partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared and the date on which the partition is to take effect to be recorded therein.*

*122. **Delivery of possession of property allotted, on partition** – An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue-officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.”*

A careful reading of aforesaid two provisions of the Punjab Land Revenue Act, 1887 as applicable to State of Haryana (hereinafter to

be referred as “the Act of 1887”), clearly proves that instrument of partition, normally known as *sanad taksim*, is prepared by the revenue officer and comes into effect on the date recorded therein. However, the proceedings for delivery of possession starts thereafter. Ex.P33 is copy of the instrument of partition dated 23.07.1988 (*sanad taksim*), according to which the plaintiff-Hawa Singh was allotted land measuring 11 bighas 4 biswas comprised in khasra No.190//2(0-15), 292//2(0-9), 193//3(0-2), 194//2(8-8) and 214//2(1-10). Thereafter, the plaintiff-Hawa Singh filed an application dated 29.08.1988 for delivery of possession with assertions that as per the instrument of partition, possession has not been delivered to him. Ex.D2, Ex.D3, Ex.D4, Ex.D5, Ex.D6, prove that the proceedings were initiated but physical possession of the land allotted to the plaintiff in the partition was never delivered. The order dated 10.01.1989 Ex.D7 also proves that the physical/actual possession of the land in dispute was not delivered to the plaintiff.

Learned counsel for the respondent-plaintiff made an attempt to refer to rapat roznamcha (daily diary report) Ex.PW1/C to submit that possession of the land has been delivered. However, on careful perusal of Ex.PW1/C, it becomes clear that Hawa Singh-plaintiff was delivered possession of 11 bighas 6 biswas of land comprised in khasra No.190//1 (0-15), 194//1(10-0), 292//1(0-11). However, this land is different from the suit land. Hence, Ex.PW1/C does not help the plaintiff.

On careful reading of the judgment passed by the learned First Appellate Court, it is apparent that the learned First Appellate Court

has drawn conclusion only on the ground that after preparation of the instrument of partition, the mutation of the land has been sanctioned and incorporated in the revenue record vide mutation No.437 dated 15.02.1990. In the considered view of this Court, the inference drawn by the learned First Appellate Court is erroneous. Mutation of the land is for updating the record. Section 34 of the Act of 1887 permit the officers to enter the mutation and update the record.

However, sanction of mutation is not evidence of delivery of possession. The delivery of actual/physical possession can be only through an order passed under Section 122 of the Act of 1887. At the cost of repetition, it may be noted that such application filed by the plaintiff was dismissed.

Learned First Appellate Court has also erred by observing that the defendants have also taken a wrong stand that the land continues to be joint. It is well settled that the plaintiff has to stand on its own legs. The plaintiff cannot succeed only on the ground that the defendants have taken an incorrect stand or there is deficiencies in the evidence led by the defendant(s). The plaintiff is to fail or succeed, on the basis of his own evidence, unless the defendants have admitted the correctness of the case of the plaintiff.

Keeping in view the aforesaid facts, the question framed is answered in favour of the appellants and it is declared that the instrument of partition or sanction of mutation on the basis thereof are not evidence of delivery of actual/physical possession.

Now let us examine the counter claim which is subject matter of RSA No.4686 of 2015.

Once the partition proceedings have finalized and deed of partition has been prepared, the sanction of mutation by the revenue authorities on the basis thereof cannot be held wrong. There is no illegality in sanctioning of mutation on the basis of the instrument of partition.

Keeping in view the aforesaid discussion, RSA No.2442 of 2015 is allowed whereas RSA No.4686 of 2015 shall stands dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

07.02.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No