

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 4145 of 2016 (O&M)
Date of Decision: 27.1.2020**

Mukhtiar Singh and another

---Appellants

versus

Bhirawan Bai and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Ms. Kiranjeet Kaur, Advocate
for Mr. Harpreet Singh Jakhal, Advocate
for the appellants**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration that respondents-plaintiffs are owners in possession of land, detailed in para 1 of the judgment of Trial court and order dated 31.3.2006 passed by the Assistant Collector Ist Grade, Jalalabad as well as mutation No. 3553 being illegal, unlawful and vague with consequential relief of permanent injunction restraining the defendants including the appellants from causing interference in peaceful cultivating possession of respondents-plaintiffs, was decreed.

Counsel for the appellants would argue that Balwant Singh, predecessor-in-interest of respondents-plaintiffs was not alive when application for partition of joint land was filed. It is further argued that since mutation in regard to inheritance to Sh. Balwant Singh was not

sanctioned by the time application for partition was filed, his (Balwant Singh) successors-in-interest were not made party to partition proceedings. Dayal Singh, one of the respondents-plaintiffs filed application for impleadment but the same was dismissed as mutation in respect of inheritance to Sh. Balwant Singh had not been sanctioned by the time the application was decided. It is further argued that as Dayal Singh filed application for impleadment, it shows that he had knowledge of pendency of partition proceedings but did not bother to join the same despite mutation having been sanctioned in favour of legal heirs of Sh. Balwant in the year 2004 when otherwise partition proceedings were culminated in order dated 31.3.2006. It is argued with vehemence that defendants can not be condemned for non-impleadment of Balwant Singh or his legal heirs in the partition proceedings nor the order of partition can be set aside on this score, as has been allowed by the courts.

I have heard counsel for the appellants and perused the paper book particularly the judgments impugned.

Be that as it may, it is undisputed position of the case that Balwant Singh was one of the co-sharers in joint land sought to be partitioned by filing an application before the revenue authorities that culminated in order dated 31.3.2006 passed by Assistant Collector Ist Grade, Jalalabad. Neither Balwant Singh nor his legal heirs were impleaded as a party in partition proceedings. As per the settled position in law, mutation neither confers nor extinguishes title to land. The same is recorded for fiscal purposes and to straighten the revenue records. Since Balwant Singh had already passed away, the defendants could implead his legal heirs as a party in partition proceedings. Sh. Dayal Singh, one of the

sons of Balwant Singh filed application for impleadment but the same was dismissed for want of mutation. Even after sanction of mutation, the concerned revenue authorities did not bother to call upon legal heirs of Balwant Singh to appear in partition proceedings, thus, the courts have rightly held that order of partition violates the principle of natural justice, thus, can not sustain. In this view of the matter, I do not find any reason to interfere in consistent findings recorded by the courts.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to right of co-sharers to seek revival of partition proceedings or file a fresh application for partition, in accordance with law.

(Rekha Mittal)
Judge

27.1.2020

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No