

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

RSA No.3218 of 2019 (O&M)
DATE OF DECISION : 12th MARCH, 2020

Kanwar Singh & another

.... Appellants

Versus

Ashok Kumar & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Dharamveer Phour, Advocate for the appellants.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the second appeal filed by the unsuccessful defendants, challenging the concurrent judgments and decrees, passed by the courts below, whereby; the suit for injunction filed by respondents/plaintiffs for restraining the appellants/defendants from interfering with possession of the plaintiff, has been decreed.

2. For the convenience, the parties are being referred to herein as the plaintiffs and the defendants; as they were described in the original suit.

3. The brief facts, leading to the present appeal, are that the plaintiffs had filed the instant suit asserting therein that the suit land, comprising Khewat No.21, Khatoni No.28, Khasra No.48/2 measuring 1 Kanal 6 Marla is a *gair mumkin gait* situated within *abadi* and is in exclusive ownership and possession of the plaintiff. Earlier, this Khasra No.48 was joint. However, the same was ordered to be partitioned by the Assistant Collector First Grade (Tehsildar), Rewari vide order dated

20.12.1978. Accordingly, the forefather of the plaintiff, namely, Meda and Kishan Lal got Khasra No.48/2 and the possession of the same was also delivered to them. Even mutation No.65 and 158 were entered to this effect. The defendants are totally stranger to the suit property after the partition. However, they are adamant to dispossess the plaintiffs from the suit land. They be restrained from interfering in the peaceful possession of the plaintiffs.

4. Opposing the suit filed by the plaintiffs, the defendants/appellants filed written statement asserting therein that the suit property is common and no partition has ever taken place. The plaintiffs are not the exclusive owner in possession, rather; every co-sharer, including the defendants, have a right on the suit land. Accordingly, the defendants also have a right to use the suit land as per their desire.

5. To substantiate their respective claims, both the sides led the evidence. After appreciating the evidence and hearing the parties, the trial court had decreed the suit in favour of the plaintiffs. Feeling aggrieved against the same, the defendants had preferred appeal before the lower appellate court. However the same has been dismissed by Lower Appellate Court. Hence, the present appeal has been preferred.

6. Arguing the case, learned counsel for the appellants/defendants has submitted that the defendants are still in possession of the suit property. Hence the assertion of the plaintiffs that the partition had already taken place and the plaintiffs were handed over the suit property on the spot, is totally baseless. The suit property is still joint. It is further submitted that since the property is within the *abadi*

area, therefore, the Assistant Collector did not even have the necessary jurisdiction to order partition of the suit land. The jurisdiction in this regard lies exclusively with the civil court. Hence, even the order of the Assistant Collector is null and void. Therefore, both the courts below have gone wrong in law in decreeing the suit.

7. Having heard the counsel for the appellant and having perused the file, this court does not find any substance in the argument of the counsel for the appellant. It has come on record that earlier Khasra No.48, mentioned above, was joint holding between the parties. However, vide order dated 20.12.1978, passed by the Assistant Collector First Grade, Rewari, the said Khasra number was partitioned and two Khasra numbers i.e. 48/1 and 48/2 were carved out. Khasra No.48/1 was allotted to the father of the defendants. Whereas, Khasra No.48/2 was allotted to the father of the plaintiffs. This entire sequence of facts is duly reflected in document Exhibit P-11, which is *sanad takseem*. Exhibit P-12 is the rapat, which records the delivery of possession of the suit property to the plaintiffs. Hence, it is established that the suit land has gone in exclusive ownership and possession of the plaintiff after the above said partition.

8. One more aspect, which has come on record, is that the above said partition was challenged by one Khushi Ram. However, the said suit was dismissed vide judgment and decree dated 18.07.1995, which has been placed on record as Exhibit P-15. Thereafter; the partition has also been recorded in the revenue record; in the form of Jamabandi for the year 2005-2006.

9. So far as the possession of the appellant over the suit property, is concerned, on this aspect also the courts below have come to the conclusion that the appellants are not in possession of the suit property. The defendant No.2 himself has appeared as DW-2. However, the defendants have failed to prove any possession over the suit property, either through oral or any documentary evidence. On the contrary, the defendants tried to dispute the entries in the revenue records showing the possession of the plaintiff. However, on that aspect also, it deserves to be noted that; the defendants have never approached the appropriate authorities for correction of the same. Otherwise; the civil court has already upheld the partition ordered by the Assistant Collector, as mentioned above. Hence, the courts below have rightly come to the conclusion that the defendants neither have any right, title or interest in the property, nor are they in possession of the same. Hence, the suit has rightly been decreed by the courts below.

10. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant.

11. In view of the above, finding no merit in the present appeal, the same is dismissed.

12th MARCH, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>