

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

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RSA No.5438 of 2019 (O&M)

Date of decision: 25.02.2020

Sawraj Kumari

... Appellant

Versus

Kartar Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sushil Saini, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal has been directed against judgments and decrees passed by the Courts whereby suit for separate possession by partition of joint property measuring 1 kanal 8 marlas, detailed in headnote of the plaint, was decreed by the trial Court vide decree and judgment dated 03.12.2016 that came to be affirmed in appeal by the Additional District Judge, Gurdaspur.

Indisputably, the appellant/defendant purchased 5/7 share out of land measuring 1 kanal 8 marlas vide sale deed dated 13.02.1978 Ex.D2, executed by Amarjit Singh, Brahmjit Singh, Meharjit Kaur, Mohinderjit Kaur and Joginder Kaur, successors in interest of Labh Singh son of Roor Singh, erstwhile owner of Khasra No.65R/18/1/1 measuring 1 kanal 8 marlas, amounting to 1 kanal of land. The remaining 8 marlas out of aforesaid khasra number to the extent of 2/7 share was purchased by the respondent/plaintiff vide sale deed dated 10.11.2007 executed by Gurpuranjit Singh and Simranjit Kaur son and daughter respectively of Labh Singh son of Roor Singh.

Counsel for the appellant has assailed the aforesaid judgments primarily by raising two submissions. It is argued that as the appellant purchased 1 kanal out of land measuring 1 kanal 8 marlas with specific boundaries and dimensions, findings of the Court that land measuring 1 kanal 8 marlas is jointly owned by the parties to lis are erroneous, thus, liable to be set aside. Another submission made by counsel is that the appellant raised a plea with regard to the suit being not properly valued for

the purpose of Court fee and jurisdiction and issue No.2 was framed in this regard. It is argued that issue No.2 was answered by the trial Court with the observations that appellant (defendant therein) did not press that issue. It is argued that the appellate Court did not advert to the question of valuation for the purpose of Court fee and jurisdiction, therefore, the judgments are liable to be set aside.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and copies of documents supplied during the course of hearing.

Indisputably, land comprising khasra No.65R/18/1/1 measuring 1 kanal 8 marlas was previously owned by Labh Singh son of Roor Singh. Out of the aforesaid khasra number, 5/7 share to the extent of 1 kanal was sold by five class-I heirs of Labh Singh in favour of the appellant vide sale deed dated 13.02.1978. The remaining 8 marlas to the extent of 2/7 share in the aforesaid khasra number was sold by other two class-I heirs of Labh Singh namely Gurpuranjit Singh and Simranjit Kaur in favour of the respondent-plaintiff vide sale deed dated 11.10.2007. As per the settled position in law, sale of share by a co-owner even by way of specific boundaries and dimensions would be treated as sale of share as a vendee from a co-sharer cannot get any right better than what the vendor(s) had in the sold property. That being so, contention raised by the appellant that since she purchased 1 kanal of land out of 1 kanal 8 marlas by way of specific boundaries and dimensions, therefore, she ceased to be co-owner of khasra No.65R/18/1/1 is not legally sustainable and has rightly been rejected. In this context, reference can be made to decision of Full Bench of this Court **Bhartu Vs. Ram Sarup, 1981 PLJ 204**.

The second submission made by counsel with regard to suit being not properly valued for the purpose of Court fee and jurisdiction is not meritorious. Issue No.2 was decided by the trial Court with the observations that the appellant did not press said issue. Counsel for the appellant has failed to point out if any specific challenge has been laid against findings of the trial Court on issue No.2 much less a contention was raised before the appellate Court to substantiate plea of the appellant on the question of valuation for the purpose of Court fee and jurisdiction. That

being so, it can safely be held that observations of the trial Court on issue No.2 have attained finality. This apart, the question of payment of Court fee is between the Court and the plaintiff and defendant has nothing to do with the payment of requisite Court fee. In this view of the matter, the appellant cannot derive any advantage to her contention with regard to suit being bad for improper valuation for the purpose of Court fee or/and jurisdiction.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

25.02.2020

(REKHA MITTAL)
JUDGE

ashok

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No