

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

RSA-170-2021(O&M)

Date of decision: 28.04.2021

Jagmeet Singh

.....Appellant

Versus

Harnek Singh (since deceased) through LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Saggar, Sr. Advocate with
Mr. Tajeshwar Sullar, Advocate for the appellant

ANIL KSHETARPAL, J.

1. The plaintiff-appellant through a special power of attorney in his favour has filed this Regular Second Appeal challenging the correctness of concurrent findings of fact arrived at by the courts below. The plaintiff claiming to be the grandson of Late Sh. Ranjit Singh filed a suit that he is the owner in possession of the agricultural land comprised in Rect. No.54 khasra no. 4/1/2 on the strength of a sale deed dated 01.06.1964. He claimed that Tarlok Singh, Mela Singh alias Mehla Singh and Charan Singh were the co-owners in the said property. While carrying out the partition proceedings in the case titled as 'Pal Singh vs. Harnam Singh and others', the Assistant Collector IInd Grade vide an order dated 01.01.1962 partitioned the property and allocated 11 kanals and 1 Marla of land to Tarlok Singh including the land in

dispute. It is further asserted that defendant no.1 and the predecessors of defendant no. 2 to 5 purchased the land from Mehla Singh vide sale deed dated 08.06.1967. However, there is a mistake in the aforesaid sale deed as the description i.e. land comprised in Rect. No.54 khasra no.4/1 (4 kanals 16 marlas), has been wrongly mentioned and in fact, Mehla Singh was never allotted the land in Rect no.54. Thus, the plaintiff claims that the sale deed executed by Mehla Singh on 08.06.1967 which came to be registered on 24.08.1967 suffers from an error/mistake and therefore, is not binding on the rights of the plaintiff.

2. The defendant contested the suit and submitted that they are the exclusive owners in possession of the same. The factum of the partition proceedings and the consequential order dated 01.01.1962 was claimed to be illegal, null and void. It was further claimed that defendant no.1 and Khem Singh purchased the property through a registered sale deed from the then owner of the property and they are in cultivating possession of the land since the date of purchase i.e 08.06.1967.

3. On completion of the pleadings, the learned trial court framed the following issues:-

- “1. Whether the plaintiff is entitled for decree of declaration as prayed for?OPP
2. Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether the plaintiff is guilty of concealment of material facts from the court?OPD

5. Whether the suit of the plaintiff is hopelessly time barred? OPD

6. Relief'

4. The plaintiff, in order to prove his case, appeared in the evidence through his attorney. The plaintiff also produced a photocopy of the order dated 01.01.1962. However, the plaintiff did not make any attempt to prove the alleged partition proceedings. The record from the office of the Assistant Collector, IInd Grade was never summoned.

5. Keeping in view the aforesaid facts, both the courts below dismissed the suit.

6. Learned senior counsel representing the appellant while drawing the attention of the Court to the application for permission to lead additional evidence submits that the suit land falls in between the piece of land purchased by the plaintiff. He, hence, submits that the judgments passed by the Courts below are erroneous.

7. It may be noted here that by filing an application under Order 41 Rule 27 CPC, the plaintiff intends to produce on record a copy of the verification certificate showing his possession and a copy of the lay out plan (Akasjra). These documents do not advance the case of the plaintiff. The suit of the plaintiff is primarily based on the order of partition passed by the Assistant Collector IInd Grade on 01.01.1962. The plaintiff has not proved that the joint land was ever ordered to be partitioned. The plaintiff has only produced a photo copy of an alleged certified copy of the order dated 01.01.1962 but has failed to show as to how it is admissible in evidence. Moreover, the plaintiff never made any efforts to summon the record from the office of the Assistant

Collector IInd Grade. On 23.03.2021, when the appeal came up for preliminary hearing, learned senior counsel sought time to examine the record and assist the Court. Hence, the case was adjourned for a period of one month. However, learned senior counsel failed to produce any evidence in support of his case. Still further, it is not in dispute that the alleged order of partition dated 01.01.1962 has not even been incorporated in the revenue record. Thus, the plaintiff has failed to prove the existence and validity of the order of partition dated 01.01.1962. Still further, the plaintiff, before filing the suit in the year 2013, never questioned the correctness of the sale deed executed in favour of defendants on 08.06.1967.

8. Keeping in view the aforesaid facts, this Court finds that the plaintiff has failed to make out case for interference in the concurrent findings of fact.

9. By filing an application under Order 41 Rule 27 CPC, the appellant prays for permission to produce on record a report made by a Patwari to the effect that it is the appellant who is in the possession of the concerned property along-with a copy of the lay out plan. This report has been made on an application filed by the appellant .A mere report does not prove possession. The aforesaid report is not even per se admissible. Still further, the plaintiff-appellant has to first prove that there was a final order of partition passed by the Assistant Collector IInd Grade on 01.01.1962. In the absence of any evidence to prove this fact, the plaintiff cannot succeed in his case.

10. Hence, the appeal as well as the application for permission to lead additional evidence are dismissed.

28.04.2021

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes /No

Yes / No