

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

**RSA No.3368 of 2009 (O&M)
Date of decision: 20.08.2021**

Prithvi Singh

... Appellant

Versus

Sumer Chand and ors.

... Respondents

RSA No.3868 of 2009 (O&M)

Sheo Ram and ors.

... Appellants

Versus

Sumer Chand and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. VK Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate for the appellants.

Mr. Rakesh Bakshi, Advocate for respondent No.1.

Mr. Ashwani Chopra, Sr. Advocate with
Mr. Brahmjot S. Nahar, Advocate for respondent No.2.

Mr. Ruhani Chadha, Advocate
for the applicant (CM No.1466-C-2021).

ANIL KSHETARPAL, J.

By this judgment, RSA No.3368 and 3868 of 2009 arising from a common judgment passed by the learned First Appellate Court shall stand disposed of. In fact, RSA No.3368 of 2009 has been filed by defendant No.5 whereas the other appeal has been filed by defendant No.3, 4, 6 and 7. The respondent No.1 and 2 (the plaintiffs) filed a suit for grant of decree of

permanent injunction restraining the defendant No.1 to 7 from illegally and unauthorizedly interfering in their peaceful physical possession or by transferring or alienating any portion or part of plot Nos.1, 2, 3, 6, 7, 10, 17, 18, 19, 61 and the vacant space lying in between plot No.9 and 10 and vacant space lying on the back of plot No.15 and 16 measuring 6ft x 75ft. They have asserted that in the year 1980, the property was partitioned after carving out plots in the joint land. It is further claimed that the property in dispute fell to the share of defendant No.8 (the father of the plaintiffs) who met through a civil Court decree in favour of the plaintiffs in Civil Suit No.646 of 1993 decided on 08.11.1993. The defendants contested the suit by filing two separate written statements. One written statement was filed by defendant No.3, 4, 6 and 7 whereas separate written statement was filed by defendant No.5. Subsequently, defendant No.9 to 11 were added as party.

On completion of the pleadings, the trial Court, vide order dated 04.01.1999 framed the following issues:-

1. Whether the plaintiffs are absolute owners in possessions of the suit property? OPP
2. Whether the plaintiffs are entitled to injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the suit is barred under Section 41(h) of Specific Relief Act?OPD
5. Whether the plaintiffs have got no locus standi to file

the present suit?OPD

6. Whether the suit is bad for non-joinder of necessary party?OPD

7. Relief.

Thereafter, additional issue No.6-A was framed vide order dated 15.03.2002.

6-A. Whether defendant No.11 is a bona fide purchaser of the suit land in good faith?OPD

Both the Courts, on appreciation of evidence, have concurrently found out that the property was partitioned between the parties. Thus, the Courts have decreed the suit filed by the plaintiffs.

On 07.09.2012, the appeal was admitted to consider the following question of law:-

Whether the suit for injunction could be filed on the basis of mutual division of the property taken place between the parties, without mentioning as to when the same occurred and without even detailing what share was given to all the co-sharers?

Heard learned counsel for the parties and with their able assistance, perused the paper book and requisitioned the record of the Courts below.

Sh. VK Jindal, learned senior counsel for the appellants submits that all the sale deeds have been executed jointly by the co-sharers and as a result, the Court has erred in decreeing the suit. He further submits that the

layout plan depicting partition of the property carries the signatures of the parties and therefore, the layout plan of the colony cannot be treated as an instrument of partition. He further contends that it has nowhere been recorded how and in what manner the partition has taken place. Further, there is no clarity as to how much land fell to the share of each one of them. He, hence, contends that the appeal deserves acceptance.

Per contra, the learned senior counsel representing the respondents/plaintiffs contends that the sale deeds are not executed by all the defendants jointly and in all the sale deeds, a specified piece of land identified by specific plot number has been sold. He further contends that in a previous suit filed by Satpal, defendant No.5 filed written statement taking a positive stand that the suit land stands partitioned. Further, it is apparent from the conduct of the parties that the property was partitioned.

Learned counsel representing the appellants, in rebuttal, has submitted that the written statement filed by the appellant (defendant No.5) along with co-owners in the previous suit cannot be taken as substantive evidence. He further contends that the plaintiffs have themselves contradicted their stand.

After having heard the learned counsel for the parties, let us now proceed to examine the case in detail.

It may be noted here that defendants while filing their written statements in Civil Suit No.1227 of 1990 filed by Satpal, took a positive stand that in the year 1980, the entire property was divided into small residential plots and mutually partitioned. It was further pleaded that

defendant No.2 and 3 have been given plot from khasra No.281, 283 and 285. Again, in para 2 of the written statement, defendants asserted that the property stood already partitioned. The aforesaid written statement is signed by Prithvi Singh, appellant in RSA No.3368 of 2009 and the other defendants who are appellants in the connected appeal. Furthermore, there are more than 35 sale deeds which have been produced. Except, sale deed Ex.P4 executed on 11.08.1990, Brij Mohan, who is admittedly a co-sharer is not party to the aforesaid sale deeds. Sale deeds Exs.P5 to P17 have been executed by various co-owners except Brij Mohan with respect to specific plot by referring to specific plot number. Following that, the sale deeds Exs.P18, P21, P24, P29, P32, P34, P36 have been executed by Mewa Singh. Similarly, sale deed Ex.P20 is executed by two co-sharers Nathu Ram and Shiv Ram. Sale deeds from Exs.P23 to P39 are executed by one of the co-sharers. Apart therefrom, sale deeds Exs.P25 to P31, P33, P34, P36, P37 and P39, it is specifically recorded that in a family partition the plot which is subject matter of sale, has come to their share. In the presence of the aforesaid overwhelming evidence, the findings of the Courts below to the effect that the property stood partitioned in the year 1980 does not suffer from any error.

Now let us examine the argument of learned counsel for the appellants. As regards the first argument of the learned counsel representing the appellants that all the sale deeds have been executed by all the defendants is factually incorrect. As noticed above, Brij Mohan is party to the sale deed Ex.P4 only. Moreover, in the various sale deeds executed by

the defendants, they have themselves asserted that there was a partition by way of family settlement. In such circumstances, there is no substance in the argument of learned counsel.

Next argument of learned counsel for the appellants is with regard to the unsigned layout plan. It may be noted here that as per layout plan, the property has been divided into separate plots. All the sale deeds referred to above have been executed in accordance with the aforesaid layout plan. Thus, the case set up by the plaintiffs gets credence from the layout plan. No doubt, the layout plan is not signed by the parties, however, that itself does not advance the case of the appellants in view of overwhelming evidence proving partition of the joint property.

The next argument of the learned counsel for the appellant is also without substance considering, if all the owners identified their respective plots in a family settlement, any separate description of individual land was not required.

The next argument of learned counsel is with regard to the admissibility of the written statement filed by the defendants in the previous suit. It has come in evidence that one of the defendants i.e. Dayal Singh, while appearing in evidence, admitted his signatures on the written statement. It is not the case of the defendants that this written statement has not been filed by them. Hence, the written statement which was exhibited and proved, has correctly been relied upon by the Courts below.

With respect to the last argument of learned counsel, it may be noted that there is no contradiction in the stand of the plaintiffs. It may be

noted here that the plaintiffs have from very beginning taken a stand that the property has been partitioned in the year 1980. No doubt, the plaintiffs did execute certain sale deeds by referring to entire joint land, however, on careful reading of the sale deeds, it is apparent that all the sales are of a specific plot. Hence, it cannot be said that the stand of the plaintiffs is contradictory.

Keeping in view the aforesaid discussion, there is no substance in the arguments of the learned counsel for the appellants.

In view of the aforesaid discussion, it is apparent that all the 8 co-sharers have partitioned the property by allocating the plots which fell to the share of each co-owner. It is not necessary that the date on which the family partition took place is necessarily to be disclosed particularly when it has come on record that the property stands mutually divided in the year 1980. In view thereof, the question of law reproduced above, is answered against the appellants. Consequently, finding no merit and both the appeals are dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

20.08.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)

JUDGE

Yes / No
Yes / No