

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

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**RSA-126-2021 (O&M)
Decided on : 17.05.2022**

Arjun Singh

. . . Appellant(s)

Versus

Tarsem Singh and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Ajay Pal Singh Rehan, Advocate
for the appellant(s).

MANJARI NEHRU KAUL, J. (Oral)

The appellants/defendants are assailing the correctness of the concurrent findings of fact arrived at by both the courts below while decreeing the suit for possession of the agricultural land measuring 14 Kanals-10 Marlas, comprising in Khewat No. 82/74 min, Khatoni No. 158, Rect. No. 84, Killa No.24 (7-8), 25/2 (3-6), Rect. No. 88, Killa No. 5 (3-16), situated within the revenue estate of village Bhandari, Sub Tehsil Madlauda, District Panipat vide Jamabandi for the year 2000-01.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The case as set out by the plaintiffs (respondents herein) is that the plaintiffs filed a suit for permanent injunction against the appellants/defendants on the ground that land measuring 79 Kanal 19 Marla, situated at Village Giddar Windi, Tehsil & District Gurdaspur, was in the joint ownership of both the plaintiffs and the defendants as well as co-sharers. The plaintiffs had applied for partition of the aforementioned land in the Court of Tehsildar (exercising the powers of Assistant Collector, 1st Grade, Gurdaspur).

Vide order dated 12.05.2010, the aforementioned land was partitioned by the Tehsildar, Gurdaspur and land measuring 35K-19M comprised in Rect. No. 2 Killa No. 14 (7-4), 17 (7-12), 18 (8-0), 19/1/1 (0-16), 22/2/1 (3-9), 13/1 (3-13), 12/2 (0-4), 23/1 (2-16), 24/1 (2-5), was allotted to the plaintiffs in the Naksha Jeem. The A.C. 1st Grade, Gurdaspur, approved the partition. An appeal, which was preferred by the defendants was dismissed by the Court of the Collector, Gurdaspur, vide order dated 09.09.2011 and thereafter, possession of the land allotted to them in the partition vide Rapat Roznamcha dated 25.02.2011, was delivered to the plaintiffs. The mutation of the land allotted to the plaintiffs was also sanctioned in their name. Ever since the delivery of possession, the plaintiffs have been continuing in actual peaceful possession of the suit land including the land in dispute allotted to them in partition. However, the entries in the Khasra Girdawaris have been continuing in the name of one Surjit Singh erroneously.

On being put to notice, the defendants filed their written statements and submitted that an appeal *qua* the partition was pending before the Commissioner, Jalandhar and hence, the partition had not attained finality. It was denied that the land measuring 35K-19M ever fell to the share of the plaintiffs and the possession of the said land was delivered to the plaintiffs vide Rapat Roznamcha dated 25.02.2011. It was rather submitted that the defendants had purchased the land and as per sale-deed, the possession stood delivered to them.

On the basis of the pleadings and other evidence led by both the parties, the trial Court decreed the suit of the plaintiffs vide judgment and decree dated 03.08.2017. The appeal preferred to impugn the judgment and decree passed by the trial Court was dismissed by the lower Appellate Court.

Learned counsel for the appellant-defendant has reiterated his

submissions made before the both the Courts below and has submitted that both the Courts below misread the evidence by not appreciating the fact that the delivery of possession vide Rapat Roznamcha dated 25.02.2011 (Ex.P1) was not actual physical delivery but was only a symbolic delivery of possession. He further contends that the plaintiffs failed to prove their possession over the suit land at the time of filing of the suit.

I have heard learned counsel for the appellant/defendant and perused the material on record including the impugned judgments & decrees, passed by both the Courts below.

The plaintiff/respondent No.2 – Jasbir Singh while appearing as PW-1 before the trial Court produced copy of the Rapat Roznamcha (Ex.P1) along with Jamabandi for the year 2009-10 (Ex.P2) to show the possession of the plaintiffs over the property in question, wherein, the land measuring 79K-19M was shown to be in the joint ownership of both the plaintiffs as well as the defendants and other co-sharers. Thereafter, partition of the above land was carried out on the application of the plaintiffs. 35K-19M of land, was allotted to the plaintiffs in the Naksha Jeem and the partition was approved by A.C. 1st Grade, Gurdaspur. The appeal, which was preferred by the defendants was dismissed by the Collector, Gurdaspur. Admittedly, mutation of the land, which was allotted to the plaintiffs stands sanctioned in their names and the possession of the property, which was allotted to the plaintiffs in the partition proceedings was also delivered by the revenue officials to the plaintiffs. No doubt, in the Rapat Roznamcha (Ex.P1) only symbolic possession stands delivered by the revenue officials to the plaintiffs, however, it transpires from the impugned judgment that during the cross-examination of Arjun Singh (appellant/defendant) who appeared as DW-1, he on the one hand admitted that partition proceedings pertaining to the property in question had indeed taken

place, however, in the same breath during his examination-in-chief, deposed that the entries in the Khasra Girdawari pertaining to the property in question had been erroneously continuing in the name of Surjit Singh. In the circumstances, one fact which stands conceded by the defendants, is that they were at no point in time recorded to be in possession of the property in question. It cannot be overemphasized that entries in the revenue record carry the presumption of truth. When it is the own admitted case of the defendants/appellants that they are not recorded being in possession of the suit property and the entries in the Khasra Girdawaris pertaining to the property in question, are erroneously continuing in the name of Surjit Singh, then the delivery of 35K-19M pursuant to the partition proceedings vide Rapat Roznamcha (Ex.P1), even if it is symbolic possession would be a sufficient enough ground for the plaintiffs to seek injunction against the defendants.

Upon being pointedly asked, learned counsel for the appellants/defendants has failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffer from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees passed by the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 17, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*