

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

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**RSA No. 897 of 2010 (O & M)
Date of decision : 28.9.2022**

Baidharak Singh and another**.....Appellants****Vs.****Hardam Singh @ Hardam Dass and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Shilak Ram Hooda, Advocate, for the appellants
Mr. Arvind Kashyap, Advocate, for respondents No. 1 to 3 & 5
Mr. Shailendra Sharma, Advocate, for respondent no.7

TRIBHUVAN DAHIYA, J. (Oral)

1. This is second appeal filed by the appellants/plaintiffs (hereinafter referred to as 'the plaintiffs'), in a suit for possession by way of partition of the suit land, total measuring 42 kanal 8 marla and one house, by holding the plaintiffs and defendants no.1 to 4 as co-owners and entitled to possession of 1/6th share each out of the suit property. The suit was dismissed by the trial Court vide judgment and decree dated 25.10.2007. Appeal against the same was also dismissed by the lower Appellate Court by judgment dated 16.9.2009.

2. It has been held by the lower Appellate Court that on 16.9.2009 the counsel for the plaintiffs made a statement in Court that no relief is being sought with respect to land measuring 23 kanal 7 marla out of the suit land bearing *Khasra* No.17//1/2 (0-18), 10 (8-00), 11 (8-0). *Khasra* no. 20//2 (5-16), 21//1 (0-13), measuring 23 kanals 7 marlas.

3. In this background, the only contention raised before the Courts by the plaintiffs was that the remaining land bearing *Khasra* nos. 13//27 (2-

0), *Khewat/ Khatauni* no. 600/705, *khasra* no. 13//18/1 (0-7), 23/1 (2-4), 23/2 (3-11), *Khewat Khatauni* no. 700/834, *Khasra* No. 13//18/2 (6-19) was ancestral in nature and was inherited by late Daya Singh/defendant no.1 from his grand-father. The land was sold by him without legal necessity vide sale deed dated 8.7.2001, which was illegal and deserved to be set aside.

4. In this regard, it has further been recorded by the lower Appellate Court that a Civil Suit No. 655 of 1990 was filed by the sons of Daya Singh, i.e., Harinder Singh Cheema and Baidharak Singh (present plaintiffs) and Jabardast Singh (all sons of Daya Singh) against their father Daya Singh seeking declaration that they have 3/5th share in the remaining suit land measuring 23 kanals 7 marls. The civil suit was decided by judgment and decree dated 27.2.1999 holding that the land bearing *khasra* nos. 17//1/2, 10, 11, 20 and 21/1, measuring 23 kanal 7 marla was held to be ancestral property of Daya Singh and his 5 sons, who were held to be co-owners to the extent of 1/6th share each. The other land, as detailed above (which is also subject matter of the instant suit) was held to be self-acquired property of Daya Singh. The judgment and decree dated 27.2.1999 has attained finality.

5. Therefore, it was held by the Courts below that regarding a part of the suit land, i.e., measuring 23 kanal 7 marla, no relief has been sought by the plaintiffs as per their statement dated 6.9.2009, and the remaining portion of the suit land has already been held to be self-acquired property of the deceased Daya Singh, vide judgment and decree dated 27.2.1999. Accordingly, he was fully competent to deal with the property in the manner deemed appropriate, and the plaintiffs have no right to seek partition of the self acquired property. Besides, at the time of filing of the suit, Daya Singh

himself was alive, therefore, no suit for partition could hve been filed by his legal heirs even with regard to the ancestral property.

6. The aforesaid findings are based on undisputed facts established on record by way of evidence. The issues being raised by the plaintiffs in the instant suit already stand finally settled between the parties by previous judgment and decree dated 27.2.1999, which renders the suit not maintainable. Learned counsel for the appellants could not raise any argument in law to impugn the findings.

7. In this view of the matter, there is no infirmity or error of law in the judgment and decree passed by the Courts below. No substantial question of law arises for consideration.

8. Dismissed.

9. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

28.9.2022
Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No