

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

**RSA-3820-2012 (O&M)
Date of decision: 25.07.2022**

Mukhtiar Singh and others

...Appellants

Versus

Nidhan Singh @ Dann Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rajbir Singh, Advocate
for the appellants.

Mr. S. S. Salar, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in this appeal is to the judgment and decree dated 23.07.2010 passed by the trial Court, vide which the suit filed by the respondents/plaintiffs, praying for possession by way of partition, was allowed as well as the judgment and decree dated 21.03.2012 passed by the lower appellate Court, vide which the appeal filed by the appellants/defendants was dismissed.

Brief facts of the case as noticed by the lower appellate Court are as under:

“The facts of the case which are imperative to the explicated for the adjudication of the appeal, in essence, are that plaintiffs Nidhan Singh and others (respondents in the present appeal) filed the suit for possession before the learned lower Court, in which it was submitted that the plaintiffs are co-sharers in the land measuring 1 bigha 17 biswas comprised in khewat no. 94, Khatauni No. 137, khasra No. 714 (1-12) and 718 (0-5), situated in the revenue estate of village Mattran, Tehsil and

District Sangrur. The property is residential dwelling house of the parties. Plaintiffs are in possession of khasra No.718 (0-5) as co-sharers and the plaintiffs were also in possession of their remaining share out of khasra no. 714(1-12). Plaintiffs were storing cow dung and were tying cattle and were also storing fire wood in the open space of khasra no.714 (1-12). Plaintiffs have constructed a residential house in Khasra no. 718 (0-5) consisting of three rooms, one kitchen, one Darwaza and rest is open space and plaintiffs have spent huge money on the construction and are in possession of the entire residential house constructed in khasra no. 718 (0-5). Per contra defendants have also constructed a residential house in khasra no. 714 (1-12); consisting of four rooms, Darwaza as shown in the site plan attached with the plaint. Some land is lying vacant, which is being used by the plaintiffs for tying cattle and for storing other articles. It was further averred that the property of the parties is still joint and has not yet been partitioned by metes and bonds. A week back defendants stopped the plaintiffs from using the vacant land of khasra no. 714 (1-12) for tying cattle etc. and for other purposes and have forcibly took the possession of the entire khasra number. Plaintiffs requested the defendants not to take the land into their own hands and to allow the plaintiffs to use the land of above said khasra number as the plaintiffs have 1/2 share in the above said khasra number, but when the defendants refused to do so, as such on the basis of these facts, plaintiffs filed the suit for before the learned lower Court.

DEFENCE TAKEN

3. Upon notice, defendants Nidhan Singh and others (appellants in the present appeal) appeared and filed written statement, in which they have denied that the plaintiffs are co-sharers in the land comprised in khewat no. 94, Khatauni No.137, khasra No. 714 (1-12). It was pleaded that khasra number is in possession of the defendants as owners. It was further pleaded that Basta Singh and Dasaunda Singh ancestors of the parties partitioned their Abadi Deh area in

between themselves on 05.02.1961. A writing to this effect was written in the Bahi, in which Dasaounda Singh signed and Basta Singh put his thumb impression in the presence of the witnesses namely Niranjana Singh son of Kehar Singh and Hardam Singh son of Bishan Singh residents of village Mattran. In this writing, the inside house alongwith adjoining area including the area of Ruri was given to Basta Singh and outer house alongwith adjoining area was given to Dasaunda Singh. It was denied that the property in dispute is residential dwelling house of the parties. Further it was admitted to the extent that the plaintiffs are in possession of khasra No. 718 (0-5) alongwith 17-18 biswas area which Basta Singh got by way of writing dated 05.02.1961 being LRs of Basta Singh. However, it was denied that the plaintiffs are in possession as co-sharers in khasra no. 714 and they are storing cow dung, tying cattle and storing fire woods in the open space. Rather the defendants are residing in this khasra number by constructing their houses from the very day when the outer house bearing khasra no. 714 (1-12) fell to the share of Dasaunda Singh vide writing dated 5.02.1961. Plaintiffs have no concern with the khasra no. 714 (1-12). Further it was admitted that the defendants have constructed residential house in khasra no. 714(1-12) and are residing therein. All the area of khasra no. 714 including the constructed and non-constructed area is in possession of the defendants as owners and defendants are using the same as owners since 05.02.1961. When the plaintiffs never remained in possession of khasra no.714, then question of dispossessing them or any request made by the plaintiffs to the defendants does not arise. Rest everything was denied by the defendants in their written statement and in the end, it was submitted that the suit be dismissed.”

Before the trial Court, issue No. 1 was contested, which reads as

under:

1. Whether the plaintiffs are entitled to possession by metes and bounds of ½ share of the suit property? OPP

The plaintiffs/respondents led their evidence and produced Basakha Singh as PW-1, Jaspal Singh as PW-2 and closed their evidence after tendering into evidence copy of jamabandi as Ex. P-3, whereas the defendants/appellants examined Tarsem Chand as DW-1, Dev Nath as DW-2, Swaran Singh as DW-3, Joginder Singh as DW-4 and tendered certain documents and closed their evidence.

Learned counsel for the appellants/defendants has argued that they are in possession of the land measuring 1 bighas 17 biswas, comprised in khewat No. 94, Khatauni No. 137, khasra No. 714 (1-12) and 718 (0-5), situated in the revenue estate of village Mattran, Tehsil and District Sangrur. The parties are the owner to the extent of ½ share and the appellants/defendants are in possession of the remaining share out of Khasra No. 714 (1-12).

Learned counsel for the appellants/defendants has further argued that there was an oral partition between the parties, which was reduced in writing on 05.02.1961 and the same was also entered into Bahi, which was thumb marked by Basta Singh in the presence of the witnesses namely Niranjan Singh and Hardam Singh. It is further submitted that in terms of said written settlement/partition, the appellants/defendants came in possession of the entire land in Khasra No. 714 (1-12), which fell to the share of their predecessor Dasaundha Singh, whereas Basta was given other part of the property.

Learned counsel for the appellants has further argued that the aforesaid document, which was duly proved by leading evidence as Ex. D-1 and Ex. D-2 (translated into Punjabi) by producing DW-2 Dev Nath, who stated that he was not present at that time.

In reply, learned counsel for the respondents/plaintiffs has argued that the document Ex. D-1 was never acted upon and it was never entered into revenue

record as is reflected in the jamabandi Ex. P-3 showing that the parties are in joint possession of the entire property being as the entry of column of *Makbuja Malkan* and in the column of ownership of the parties are shown as co-owners of the property, therefore, the suit is not maintainable.

It is further argued that the said document dated 05.02.1961 was neither acted upon nor it can be termed as memorandum of partition as rightly held by both the Courts below.

Learned counsel for the respondents/plaintiffs has further argued that even if the said document dated 05.02.1961 is to be seen, a period of more than 50 years has lapsed when the suit was filed and this document has never seen the light of the day.

After hearing learned counsel for the parties and going through the findings recorded by both the Courts below, it is apparent that as per Ex. P-3 i.e. jamabandi for the years 2000-01, the appellants are the joint owners of the suit property and it is duly shown in the column of *Makbuja Malkan* i.e. ownership of the property.

Accordingly, finding no illegality of infirmity in the findings of both the Courts below and also in view of the fact that there is no substantial question of law involved in the present appeal, the same is dismissed.

25.07.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No