

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-504-1991(O&M)

Date of reserve: 19.07.2023

Date of Pronouncement: 25.07.2023

Hardial Singh and others

....Appellants.

Versus

Sadhu Ram and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Sukhbir Singh, Advocate
for the appellants.

Ms. Deepali Puri, Advocate
for the respondents.

SUKHVINDER KAUR, J.

The instant appeal has been filed by appellants-defendants impugning the judgment and decree dated 18.11.1987 passed by learned Trial Court, whereby the suit for declaration filed by plaintiffs challenging order dated 26.08.1985 passed by Commissioner, Jalandhar Division, rejecting partition application of the plaintiffs, was partly allowed and partly dismissed and appeal against the said judgment and decree which was dismissed by learned first Appellate Court, vide judgment and decree dated 30.07.1990.

2. Briefly stated the facts of the case are that the plaintiffs namely Sadhu Singh and Karnail Singh and the defendants are share holders in the land measuring 119 Kanals 19 Marlas detailed in the head note of the plaint situated in village Chohala Sahib. On 02.12.1976, plaintiffs applied for

partition of land by way of filing application in the Court of Assistant Collector Ist Grade, Tarn Taran, which was dismissed on 05.05.1980. An appeal against the said order was preferred on 29.07.1980 in the Court of Collector Ist Grade, Tarn Taran exercising the power of Collector who accepted the appeal vide order dated 11.12.1980 after setting aside the order dated 05.05.1980. Aggrieved by that order of Collector, an appeal was filed by the defendants before the Commissioner, Jalandhar Division, who accepted the appeal on 26.08.1985 by upholding the order dated 05.05.1980 passed by the Assistant Collector Ist Grade, Tarn Taran and directed the parties to get decided the question of title from the Civil Court.

3. The order dated 26.08.1985 of Commissioner, Jalandhar Division was challenged in the instant suit being illegal on the ground that the plaintiffs are share holders to the extent of 1/2 share and are entitled to this much land which comes to 59 Kanals 19.5 Marlas, as they have not transferred any portion of joint land to anyone. It was averred that land is assessed to land revenue and the construction raised by the share holders will not affect the rights of the plaintiffs to get their share of land decided. The construction on the suit land was alleged to have been raised during pendency of the partition application. It was also averred that the vendees who purchased the land will step into the shoes of vendors/share holders. Kandhara Singh had sold the land from his share. The last vendees from Kandhara Singh are to loose their land and follow other property of Kandhara Singh without effecting the rights of the plaintiffs.

4. After notice of the suit to the defendants, defendants No.16 to 20, 26 and 28 to 31 appeared and filed their written statements, whereas the remaining defendants did not appear before the trial Court and were

proceeded against exparte. The claim of the plaintiffs was resisted by the defendants by alleging that the plaintiffs have no locus standi; that Civil Court has no jurisdiction and the suit is not maintainable. It was also denied that the suit land was jointly owned by the parties, however, it was admitted that the application for partition was rejected which was followed by certain appeals preferred before the Collector, Commissioner and others as referred above. It was alleged that the order of Commissioner Jalandhar Division was legal and valid order. Suit land is not agricultural property and is located inside the Lal Lakeer of the village. Defendants No.16 to 20 have pleaded that there was private partition of the Khata amongst its co-sharers, large number of buildings have been constructed over these Khasra numbers and the colonies exist there. Kandhara Singh son of Kesar Singh was exclusive owner of Khasra Nos.578, 579 and 580 and he had sold 1 Kanal 10 Marlas of land out of these khasra numbers, whereupon the shop, kothri and compound exist. Defendants have raised constructions. Bhola Singh and Gurcharan Kaur had expired and defendants No.16, 19 and 20 are their legal heirs. Kandhara Singh, however, sold 10 Marlas of plot from the separate Khasra number to defendants No.17 and 19 vide sale deed dated 01.12.1971 for consideration of Rs.5,000/- and delivered the possession. He had also sold the 4 marlas and 5.5 Sarsahi land out of Khasra No.578 vide sale deed dated 07.04.1972 for Rs.1500/- and another sale deed was also executed on 03.08.1970 for Rs.13,100/- and possession was delivered to the vendees.

5. Defendants No.21 to 26 admitted that they are co-sharers in the joint khata but *inter alia* pleaded that their father had purchased specific Khasra numbers from Kandhara Singh share holder in the joint khata.

Joginder Singh and Mohinder Singh jointly purchased 10 Marlas of land from Kandhara Singh out of Khasra No.581 and raised the construction thereon. It was pleaded that order of Collector was quite a legal order.

6. Defendants No.28 to 31 took the plea that they had purchased specific Khasra numbers from Kandhara Singh share holder. Defendants Mohinder Singh purchased 10 Marlas of land from Natha Singh, 8 Marlas of land from Surjit Singh, 7 Marlas of land from Sarwan Pal, 2 Marlas of land out of Khasra No.581 and raised the construction over their respective plots and the construction was not raised during pendency of the partition application.

7. In the replication, the plaintiffs reiterated the assertion made in the plaint and denied those made in the written statements. The following issues were framed by the trial Court from the pleadings of the parties:-

(1) Whether order dated 26.08.1985 of Commissioner, Jalandhar Division rejecting the partition application of the plaintiffs is liable to be set aside on the grounds mentioned in para no.5 of the plaint? OPP.

(2) Whether this Court has not jurisdiction to try the present suit? OPD.

(3) Relief.

8. Both the parties led evidence in respect of their claims. After the trial, the Court vide judgement dated 18.11.1987 decided Issue No.1 against the plaintiffs and held that order dated 26.08.1985 of Commissioner Jalandhar Division is not illegal. Issue No.2 was decided in favour of the plaintiffs by holding that the jurisdiction of the Civil Court is not barred.

However, suit of the plaintiffs was partly decreed and partly dismissed.

Defendants No.16 to 20 being aggrieved with the said judgment and decree filed an appeal before the Court of District Judge, Amritsar, which was assigned to learned Additional District Judge, Amritsar who vide judgment and decree dated 30.07.1990 upheld the judgment of the trial Court and dismissed the appeal.

9. Being dissatisfied with the judgment and decree passed by the first Appellate Court, defendants No.16 to 20 have filed the present Regular Second Appeal before this Court, notice of which was issued and respondents appeared through counsel.

10. I have heard learned counsel for the parties and have also perused the relevant record.

11. Learned counsel for the appellants while assailing the judgment of learned trial Court as well as first Appellate Court has contended that the appellants had purchased specific khasra numbers from the share holder in the year 1969 to 1971 and since then they are in possession over these khasra numbers. These khasra numbers are shown as *Taur* in the revenue record and are inside the Lal Lakir of the village. Number of constructions have been raised and now it is a part of immovable property of the village and as such cannot be treated as agricultural land. Since the purchase, neither any part was used for agricultural purpose nor the land revenue was ever paid. He has further contended that the Commissioner vide order dated 26.08.1985 has also held that the said land is not an agricultural land. He has argued that as such suit for declaration does not lie rather suit for partition of the land before the Civil Court is the appropriate remedy. In this regard, he has placed reliance upon the judgment of this Court in *Surjit*

Singh Vs. Financial Commisisoner Appeals-II, Punjab and others, 2012

(5) R.C.R. (Civil) 683; Khushal Singh and others vs. Gurdip Singh and others, 1887 P.L.J. 369 and Pritam Singh Vs. Rup Lal and others, 1986 P.L.J. 583.

12. Learned counsel for the appellants further contended that the findings of learned trial Court and that of learned Additional District Judge on Issues No.1 and 3 are contradictory to each other. Learned trial Court has taken the erroneous view by deciding the title of the land qua plaintiffs/respondents only on the basis of the revenue record. Entries in the revenue record cannot be the conclusive proof of the title. The title of the land qua the appellants was not decided by the trial Court. He has urged that the trial Court has not framed the correct issues according to the pleadings of the parties and no issue was framed about the question of title. It has also not been decided that whether the co-sharer had sold the land more than his share. It has also been contended that the declaration was sought without impleading all the interested parties, in whose favour the sale deeds had been executed. It is not clear that how much land had been sold by the vendors of the defendants, before and after, the sale deeds had been executed in favour of the appellants. He has contended that the suit for declaration challenging the order of Commissioner, Jalandhar Division dated 26.08.1985 is not maintainable and the judgment of learned Additional District Judge, Amritsar dated 30.07.1990 and of trial Court dated 18.11.1987 be set aside.

13. In the instant case, plaintiffs have challenged the validity of order dated 26.08.1985 passed by Commissioner, Jalandhar Division. Vide that order, it has been held that large number of houses have been constructed on the joint holding and the same is in ownership of various

persons and it is not clear as to what would be the title of each person. So it has been held that the question of title in the present case, shall have to be settled in a competent Court, before any partition proceedings can be started. Vide the said order, the order of the Collector was set aside and order of Assistant Collector Ist Grade was restored.

14. There is concurrent finding of both the Courts below on Issue No.1 that there is no infirmity in the above said order Ex.P7 and it is a legal and valid order. The first Appellate Court has rightly held that the question of title could not be determined by a Revenue Court and the parties were rightly given the liberty to get the matter settled from Civil Court. Both the Courts have further rightly held that the jurisdiction of Civil Court is not barred so far as the question of title was concerned.

15. This fact is not disputed that the constructions have been raised on the joint holding, which are in ownership of various persons and some of these persons had purchased the land from the co-sharers. So the Commissioner has rightly held that the question of title is to be settled, before the partition could be effected and question of title can be decided only by the Civil Court. So findings of both the Courts below on Issues No.1 and 2 are based on proper appraisal of evidence and correct interpretation of law and findings on these Issues do not call for any interference by this Court while hearing this Regular Second Appeal.

16. However, the perusal of judgment of learned trial Court reveals that in the relief clause only the interest of the plaintiffs in the suit land has been determined, on the basis of copy of Jamabandi (Ex.P10) and it has been held that the plaintiffs are entitled to the land equivalent to 1/2 share in the entire joint khata, minus 1 Kanal 4 Marlas of land sold by them

comprised in Khasra No.411, in favour of Massa Singh etc. Accordingly, the trial Court has declared the plaintiffs to be co-sharers of the 1/2 share of the joint khata of land measuring 119 Kanals 19 Marlas minus the land 1 Kanal 4 Marlas sold by them.

17. Perusal of the plaint reveals that the instant suit has been filed for declaration to the effect that the order dated 26.08.1985 of the Commissioner, Jalandhar Division rejecting the partition application of the plaintiffs in respect of the land measuring 119 Kanals 19 Marlas as detailed in the head note of the plaint, is illegal, against law, void and the plaintiffs are entitled to seek partition and possession in respect of the 1/2 share of the land detailed therein. So, the present suit has been filed by assailing order of Commissioner, Jalandhar Division, vide which it has been held that question of title in the present case shall have to be settled in a competent Court before any partition proceedings could be started and no specific declaration has been sought in the present suit that the plaintiffs are owners in possession of 1/2 share in the joint khata land as detailed in the head note of the plaint. Thus, when the present suit has not been filed for deciding the title of the parties in the suit land, then the trial Court has erroneously determined the interest of plaintiffs only, in the suit land, by holding that plaintiffs are entitled to the land equivalent to 1/2 share in the entire joint khata minus 1 Kanal 4 Marlas of land sold by them, on the basis of Jamabandhi (Ex.P10). As dispute in the present case is confined only to the partition proceedings or only to the partition of land, so the above said finding of trial Court is beyond the pleadings. So, this Regular Second Appeal is partly allowed and judgments of both the Courts below to that extent are set aside and suit of the plaintiffs stands dismissed in toto.

18. However, the parties shall be at liberty to get the question of title determined by Civil Court so far as the non agricultural property is concerned.

 All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

25.07.2023
Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No