

RSA-5453 of 2019 (O&M)

2023:PHHC:089122

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

RSA-5453 of 2019 (O&M)
Date of decision: 13.07.2023

Mander Singh and others

.....Appellants

vs.

Bhalla Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ashish Grover, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 28.10.2016 passed by learned Civil Judge (Jr. Divn), Bathinda, whereby suit for declaration and permanent injunction filed by the appellant-plaintiffs has been dismissed, as well as against the judgment and decree dated 20.05.2019 passed by learned Addl. District Judge, Bathinda, whereby appeal filed by the appellant-plaintiffs against the judgment and decree dated 20.05.2019, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The detailed facts of the case are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, the facts relevant for disposal of this second appeal are to the effect that the plaintiffs filed a suit for declaration and permanent injunction on the ground that the parties to the suit are the co-sharers in the joint *khata* measuring 165 kanals 18 marlas in khewat

No.384, as detailed in the head-note of the plaint, situated within the revenue limits of village Jai Singh Wala, Tehsil and District Bathinda. Plaintiffs No.2 and 3 alongwith other co-sharers filed an application for partition of the land measuring 165 kanals 18 marlas, before the Assistant Collector Ist Grade, Bathinda and had requested him to partition the land after excluding the land of *Gair Mumkin Ruri* from the joint khata and keeping the possession of the parties intact on the spot. The Assistant Collector formulated the mode of partition and it was provided that possession of the parties would not be disturbed in the partition proceedings as far as possible and that the *Abadi* and *Gair Mumkin Ruri* land would be excluded from partition. Although, the Assistant Collector Ist Grade was not competent to partition the *Gair Mumkin Ruri* land or the land in which question of title is involved, and only civil court was competent to partition the same, but the revenue authorities in connivance with the defendants had partitioned the land including *Gair Mumkin Ruri* and called the *Naksha Bey*, against the law and the defendant had got allotted the land measuring 10 marlas *Gair Mumkin Ruri* land, out of the suit land, to him in *Naksha Bey*, beyond his share. The plaintiffs also filed objections qua the same, which had been wrongly rejected by the Assistant Collector Ist Grade and ultimately, *Naksha Bey* was sanctioned on 29.11.2006 and *Sanad Taksim* was also prepared/issued on 01.03.2007. The defendant in connivance with the revenue authorities also got sanctioned mutation No.10569 dated 09.05.2007 on the basis of the above said partition proceedings. The defendant also got reflected the same in subsequent *jambandis* and as such, the same are liable to be set aside. The

defendant also tried to dispossess the plaintiffs from the suit land and to alienate the suit land on the basis of the above said partition proceedings. Hence the suit.

3. Upon notice, the defendant appeared and filed written statement taking preliminary objections regarding concealment of facts, non-joinder of necessary parties; time barred and maintainability. On merits, it was submitted that the entire partition proceedings were in accordance with law and rules. During pendency of partition proceedings, a compromise was effected between the parties on 17.07.2020 in the Court of learned Commissioner, Faridkot Division, Faridkot and the partition proceedings had been remanded back to the learned Tehsildar, and thereafter, amended *Naksha Bey* had been prepared. The partition was effected on the basis of compromise dated 17.07.2020 and mutation had been sanctioned on the basis of partition proceedings. The defendant is already in peaceful possession of the land fallen to his share in the partition proceedings and is enjoying the same. Rest of the averments made in the plaint were denied and controverted.

4. Court of first instance, on perusal of pleadings of the parties, framed following issues: -

- “1. Whether the plaintiffs are entitled to relief of declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for? OPP
3. Whether the plaintiffs have not come to the Court with clean hands? OPD
4. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD

5. Whether the suit is not maintainable in the present form? OPD
6. Whether the plaintiff is estopped from filing the present suit by their own act and conduct? OPD
7. Relief.”

5. Parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit of the plaintiffs. Against the judgment and decree of the Court of first instance, appeal preferred by the appellants has been dismissed and the judgment and decree of the Court of first instance has been affirmed by the lower appellate Court. Hence, this regular second appeal.

6. Learned counsel for the appellants has vehemently contended that judgments and decrees passed by both the Courts below are against law and the evidence on record. He has further contended that the Assistant Collector, Bathinda, while acting beyond jurisdiction, had ordered partition of *Gair Mumkin Ruri* and that in fact, the revenue authorities were not competent to partition *Gair Mumkin Ruri* land in terms of provisions given in Punjab Land Revenue Act and as such order passed by the revenue authorities regarding *Naksha Bey* and *Sanad Taqsim* was illegal, null and void.

7. I have heard learned counsel for the appellants and perused the record.

8. It is the case of the plaintiffs that plaintiffs, namely, Balbir and Mander Singh alongwith other co-sharers had filed application for partition of land excluding *Gair Mumkin Ruri* land. However, copy of the said application has not been produced. Furthermore, PW 2 Bhola Singh,

(plaintiff No.4) specifically stated during cross-examination that *Naksha*

Bey was prepared in 2006 and instrument of partition was issued in 2007 and on that basis, mutation was sanctioned, but they had neither filed any appeal nor objected to the same. After about five years, the plaintiffs have approached the Civil Court.

9. Furthermore, PW 3 Amarjit Singh admitted that land involved in the partition proceedings was allotted to the parties on the spot and warrant of possession had been executed and that no dispute had been arisen between the parties at that time. It can be safely drawn that the plaintiffs were also a concurring party to the partition proceedings. It is the specific case of the defendant that a compromise was effected between the parties and on the basis thereof, partition had been effected. PW 2 Bhola Singh stated that they had effected compromise with the wife of Sarban Singh. Again he stated that the compromise was effected and according to the same, procedure of transfer of possession had been carried out. Both the courts below have held that the plaintiffs have concealed the aforesaid material fact in their pleadings. The co-sharers with whom plaintiffs No.2 and 3 filed application for partition, have not been impleaded as necessary parties. The defendant also pleaded that the persons who had exchanged or purchased the land, were not joined in the present suit. Both the courts below have rightly held that in the absence of necessary parties, the matter cannot be effectively and finally adjudicated upon.

10. Concurrent findings have been recorded by both the Courts below that the revenue authorities have not acted beyond their jurisdiction during partition proceedings. No appeal has been filed in partition proceedings and in the absence of necessary parties to the lis, the matter

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cannot be effectively adjudicated upon. Learned counsel for the appellants has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

11. In view of above, no question of law, muchless substantial arises for consideration in the present appeal. No other point has been urged.

12. Dismissed in limine.

13. Pending application(s), if any, stand disposed of accordingly.

13.07.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No