

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

RSA-1029-2018 (O&M)

Date of Decision: October 06, 2023

SUGNI AND ORS

..... Appellants

Versus

ISHWAR SINGH AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rahul Sharma-I, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 14.10.2015 and 05.09.2017 passed by the Courts below whereby, suit for separate possession by way of partition, filed at the instance of appellant-plaintiff has been dismissed.

2. Briefly stating, claiming themselves owners to the extent of 17/20th share out of "gair mumkin bara" measuring 20 marlas falling in Khewat No.11/10, Khatoni No.13, Khasra No.97/1 (0-18), Khasra No.201 (0-2), total kittas 2, situated in the revenue estate of Kheri-Sikender, Tehsil and District Kaithal, the appellants filed a suit for separate possession by way of partition against respondents-defendants.

3. On the other hand respondents-defendants No.1 and 2 appeared and filed a joint written statement while claiming themselves to be owner to the extent of 3 marlas of share having been purchased vide sale deed dated 07.01.1982 from Ishwar Singh who happened to be the son of appellant-plaintiff No.1 and stated that the said Ishwar Singh separated from the family upon effecting of a partition much prior

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to the execution of the sale deed and thus the suit property had not remained joint.

4. The trial Court vide judgment dated 14.10.2015 dismissed the suit filed by appellants-plaintiffs. Aggrieved thereof, the First Appeal was filed, however, the same also came to be dismissed vide judgment dated 05.09.2017.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellants-plaintiffs submits that as per the revenue documents available on record, it was evident that the suit property was joint between the parties as partition had been recorded therein. He further submits that even vide sale deed dated 07.01.1982 the respondents-appellants No.1 and 2 purchased share out of the joint property. In support thereof, he places reliance upon decisions passed by this Court in **“Mohinder Singh Vs. Devi Lal, 2013(2) PLJ 559”**, **“Bakhtawar Singh Vs. Sarwan Singh, 2011 (52) RCR (Civil) 955”** and **“Harbans Lal Vs. Gurdev Singh, 2010(2) RCR (Civil) 769.”**

6. I have heard learned counsel for the appellants-plaintiffs and gone through the paper-book as well as the judgments cited at Bar. I am unable to find substance in the submissions made on behalf of appellants-plaintiffs.

7. A perusal of judgments and decrees based on appreciation of the statement made by PW-1-Rajesh Singh (appellant-plaintiff No.2) show that concurrent finding has been recorded by the Courts below to the effect that the suit property was not joint between the

parties though, having not been recorded as such in the revenue entries. On an appreciation of statement made by PW-1 (Rajesh Singh) wherein, he has categorically admitted that all four brothers are living separately having their own different houses at four different places, besides the admission by respondents No.1 and 2 as regards the vendor (Ishwar Singh) having separated from the family long back, I find no illegality or perversity with the concurrent findings of facts recorded by Courts below, there being no overlooking of the material available on records.

8. In the peculiar facts and circumstances of the present case, especially, in view of the statement made by appellant-plaintiff No.2 (Rajesh Singh-PW-1) himself, the judgments cited by learned counsel for the appellants are not applicable. Besides it, there is no quarrel with the proposition of law that even oral partition is permissible among the co-sharers.

9. In view of the discussion made hereinabove, the present appeal is dismissed.

10. Pending application(s), if any, shall also stand disposed of.

06.10.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>