

CM-5238-C-2023 IN/AND
RSA-1466-2018 (O&M)

102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-5238-C-2023 IN/AND
RSA-1466-2018 (O&M)
Date of decision: May 19, 2023

Jagmeet Singh and others

....Appellants

versus

Sahab Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Nonish Kumar, Advocate for the applicant-appellants.

ARUN MONGA, J. (ORAL)

CM-5238-C-2023

For the reasons stated in application, same is allowed. Main case, which was dismissed in default vide order dated 09.05.2023, is restored to its original number and the same is being taken up on Board for hearing today itself.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant/defendants No.6 to 8 are in second appeal before this Court assailing learned trial Court judgment and decree dated 27.04.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 24.10.2017. The same were passed in suit filed by the plaintiff/respondent No.1 herein seeking decree for permanent injunction restraining defendants from changing the nature of suit land in any way or manner and also from alienating prime portion/ specific khasra numbers of the suit land unless and until it is partitioned by metes and bounds.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

“2. Facts in brief of this case as set out in the plaint are that the plaintiff and defendants are joint owners in possession of the agriculture land measuring 151K-18M, comprised in Khewat No.820,Khatoni No.1287, Rectangle No.268, Killa No.18 min. (0-12), 21 min.(6-13), 22(8-0), Rectangle No.288, Killa No.4 min.(8-0), 7/1(4-0), Khatoni No.1288, Rectangle No.267, Killa No. 15/2(1-16), 16(8-0),17(8-0), 25(8-0), Rectangle No.268, Killa No. 18 min. (7-8), 19(8-0),20(8-0), 21 min.(1-7), Khasra No.1264(0-2), Khatoni No.1289, Rectangle No.227, Killa No. 16(8-0), 17(8-0), 24(8-0), 25(8-0), Rectangle No.228, Killa No.20(4-14), 21/1(5-6), Rectangle No.247, Killa No.3(8-0), 4(8-0), 5(8-0), Rectangle No.267, Killa No.24(8-0), kittas-24, situated in village Nissing, Sub Tehsil Nissing, District Karnal, vide jamabandi for the year 2007-2008 and mutation No.10064, 10094, 11457 and 11505. This land is still joint and has not been partitioned by metes and bounds. It is alleged that the defendants are strong headed persons and at the instance of some colonizers, they are out to change the nature of the suit land from agriculture to residential/commercial by bifurcating it into small parcels of land. They also intend to grab the prime/specific portion of the suit land by way of raising construction thereon. It is submitted that till the suit land is partitioned by metes and bounds all the co-sharers have right to enjoy each and every inch of the joint land. These alleged actions of the defendants cause obstruction in such enjoyment of the joint land by the plaintiff and are detrimental to his interests. The plaintiff made several requests to the defendants to desist from taking such actions. However, his genuine requests were not accepted by the defendants. Hence, the present suit.”

4. Upon notice, defendant No.1 filed written statement and stated that suit land had already been partitioned through an oral family settlement and all co-sharers were in exclusive possession of their shares. Therefore, no cause of action had arisen for the plaintiff to file and maintain the suit. He also raised various other preliminary objections regarding lack of locus-standi, maintainability, non-joinder/misjoinder of proper and necessary parties, etc. Further averments were denied and prayed for dismissal of the suit.

4.1. Defendant No.8 filed written statement (also adopted by defendants No.6 and 7) and raised the aforesaid preliminary objections. It was stated that suit land had been mutually partitioned several years ago and all co-sharers were cultivating their respective shares. The answering defendant was in cultivating possession of Khasra Nos.16, 17, 24 of Rectangle No.227, Khasra No.20 of Rectangle No.228 and Khasra No.3 (northern side) of rectangle No.247. It was further submitted that answering defendant had already constructed his residence/dera and cattle houses in

**CM-5238-C-2023 IN/AND
RSA-1466-2018 (O&M)**

KhasraNo.20 of Rectangle No.228. Similarly, plaintiff had also constructed his residential house/dera and cattle house in Khasra Nos. 24 and 25 of Rectangle No.267 several years ago. It was stated that he had filed suit by concealing all these material facts. Denied rest of the averments and prayed for dismissal of the suit.

4.2. Defendants No.12 and 13 also filed joint written statement raising preliminary objections on the lines of aforesaid defendants. On merits, they pleaded that suit land had already been mutually partitioned. Further, the answering defendants had purchased land measuring 1K-16M from Mukhtiar Singh vide registered sale deed No.249 dated 22.5.2012 and a mutation to this effect was also entered and sanctioned in their favour. Accordingly, they were cultivating this land without any interference from any corner. It was further submitted that plaintiff had himself constructed his house and cattle shed on the land situated adjacent to the metalled road. Therefore, he had no locus-standi and cause of action to file and maintain the suit. All other averments were denied and prayed for dismissal of the suit.

4.3. None appeared on behalf of defendants No.2 to 5 and 9 to 11 before learned trial Court and they were proceeded against *ex parte*. During course of trial, defendant No.1 also failed to put appearance and he was also proceeded against *ex parte*.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether the plaintiffs are entitled to a decree for permanent injunction restraining the defendants from changing the nature of the suit land and from alienating the same without getting it legally partitioned? OPP.*
2. *Whether the suit is not maintainable? OPD*
3. *Whether the plaintiff has no locus-standi to file the present suit? OPD*
4. *Whether the plaintiff has concealed the true and material facts from the court? OPD*
5. *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*
5. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 partly in favour of plaintiff. While deciding issues No.2 and 3, it held that plaintiff has locus-standi and cause of action to file and maintain the suit to the limited extent stated. Issues No.4 and 5 were decided against defendants. Consequently, decree for permanent injunction was granted in favour of plaintiff restraining defendants *inter alia* from changing the nature or from alienating any specific portion of the suit land comprised in Khewat No.820, Khatoni No.1288, which was in the exclusive possession of plaintiff. However, it was observed that defendant No.1 and defendants No.3 to 5, who were in exclusive possession of the land comprised in Khatoni Nos.1289 and 1287 respectively, may alienate any specific portion of this land. Further, it was made clear that plaintiff, defendant No.1 and defendants No.3 to 5 would be entitled to alienate the land in their exclusive possession only to the extent of their ownership rights in such land, even though they may have been in possession of the land more than their share. Such alienation of-course was subject to final adjustments at the time of partition. Remaining defendants, who were not shown to be in exclusive possession of any specific khasra numbers, though had a right to alienate their undivided share, but they could not sell any specific portion of the suit land nor could they deliver possession to the prospective vendee, who would only have a right of partition.

8. Feeling aggrieved against the said judgment and decree dated 27.04.2015, appellant/defendants No.6 to 8 preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. Learned counsel for appellants would contend that learned trial Court had decreed the suit filed by plaintiff/respondent No.1 in a contradictory manner, inasmuch as on one hand plaintiff and a few co-sharers had been allowed to alienate the land as per their share, on the other hand, other co-sharers had not been restrained to sell any specific portion of the suit land and also to deliver possession to their respective vendee(s).

10.1. Learned counsel for appellants would further canvass that all the co-sharers are in possession of specific Khasra numbers as per their respective shares by virtue of a mutual family settlement. As per the settlement, every co-sharer is in possession of share on specific Khasra numbers. He further submits that learned Courts below could not restrain a co-sharer to deliver possession of land which is in his possession and not more than the share in joint land.

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Considering the nature, facts and circumstances of the case, issuance of notice to respondents seems unnecessary and is, therefore, dispensed with.

13. I have heard learned counsel for appellants and perused the case file.

14. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“22. Now the position emerged is that in the present case, as per jamabandi for the year 2007-2008 (Ex.PI), the entire suit land is comprised in Khewat No.820, Khatoni No.1287, 1288 and 1289, totalkittas-24. A perusal of the jamabandi for the year 2007-2008 (Ex.PI) shows that the suit land is owned by all the co-sharers jointly as it is comprised in only one Khewat No.820 but the possession of the suit land is depicted by three separate Khatonis No. 1287, 1288 and 1289 and as per the entries shown in column No.5 of the jamabandi Ex.PI, some of the co-sharers are in exclusive possession of specific portions of the suit land. As per this jamabandi, plaintiff-Sahab Singh is shown to be in exclusive possession of the land comprised in KhatoniNo.1288, defendant No.1 Kartar Singh is shown to be in exclusive possession of

the land comprised in Khatoni No. 1289. Similarly, defendants Apaar Singh and Hardeep Singh are shown to be in exclusive possession of land comprised in Khatoni No.1287, in equal share. Further, as is clear from this jamabandi and the entries of mutation No. 10064 and 10094, the shares of Apaar Singh and Hardip Singh in the said land have been mutated in the names of their sons Ranjit Singh, Mohinder Singh (sons of Apaar Singh) and Ajitpal Singh (son of Hardip Singh) who are defendants No.3 to 5 in the instant suit. Therefore, the land comprised in Khatoni No. 1287 is in exclusive possession of defendants No.3 to 5, whereas the land comprised in Khatoni No. 1288 and 1289 is in exclusive possession of the plaintiff and defendant-Kartar Singh respectively. No other defendant (co-sharer) is shown to be in possession of any specific portion of the suit land. Therefore, it is established from the revenue record that the suit land has still not been partitioned by metes and bounds. It is well settled law that a co-sharer in exclusive possession of the land can sell that very portion subject to partition of the joint land and he can also oust other co-Sharers till such time when the land is partitioned by metes and bounds. Therefore, defendants No.1 and 3 to 5 who are shown in specific portions of the land, are entitled to alienate their share out of the specific portion of the suit land in their possession but such alienation of-course would be subject to final adjustments at the time of partition. However, the remaining land as per the jamabandi Ex.PI is not shown to be in the exclusive possession of any one of the defendants and therefore, they are not entitled to alienate any specific portion/Khasra number of such land nor they could change the nature of such land without getting it partitioned by metes and bounds although the defendants have every right to alienate their undivided share but they cannot deliver possession of any specific Khasra number to the prospective vendee, who would only have a right to seek separate possession of his share by way of partition. Therefore, the learned trial court has rightly held that the plaintiff is entitled to the grant of a decree of permanent injunction against the defendants to the limited extent as indicated above. Therefore, the findings of the learned trial court on all the issues under adjudication are affirmed.”

15. Having perused the impugned judgments, my considered opinion is that the same submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. Courts below did not accept the appellants’ claim herein that they are in cultivating possession of Khasra Nos.16, 17, 24 of rectangle No.227, Khasra No.20 of rectangle No.228 and Khasra No.3 of rectangle No.247 and appellants have also constructed their residence/Dera and cattle house in Khasra Nos.24 and 25 of rectangle No.267. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

**CM-5238-C-2023 IN/AND
RSA-1466-2018 (O&M)**

15.1 No new arguments have been raised other than reiteration of the stand taken before learned Courts below.

16. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

17. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

18. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

19. As an upshot of my preceding discussion, both the impugned judgments and decrees passed by learned Courts below are upheld. However, it is made clear that since it is a common case pleaded by plaintiff as well as defendants before the Courts below that all the parties are co-sharers in the suit land and partition proceedings are pending before the Revenue authorities subject to the outcome thereof, once the specific portions are assigned to each party in the suit, all of them shall be allowed to alienate their properties to the extent of their specific shares. To that extent, decree stands modified.

20. Disposed of, accordingly.

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

22. No order as to costs.

(ARUN MONGA)
JUDGE

May 19, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No