

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-3582-2018 (O&M)

Date of Decision: 11.10.2023

Om Pati and another

....Appellants

VERSUS

Hawa Singh and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Baldev Singh Badhran, Advocate,
for the appellants.

KARAMJIT SINGH, J.

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

2. Having suffered concurrent adverse findings by two Courts below, the plaintiffs are in second appeal before this Court assailing the learned trial Court judgment and decree dated 30.9.2016, as upheld by the learned first Appellate Court vide its judgment and decree dated 30.8.2017.

3. Briefly stated the facts of the case of the plaintiffs are that the plaintiffs and defendants were co-sharer in the joint land. Defendant No.1- Hawa Singh filed an application for partition of the said land in the Court of Assistant Collector, 1st Grade, Kaithal; that the plaintiffs were not served any notice of the partition proceedings and the partition proceedings were conducted at the back of the plaintiffs and the partition proceedings were finally decided by the AC, 1st Grade, Kaithal on 11.5.2010 without following proper procedure and thus, the entire partition proceedings are liable to be set aside being illegal, null and void. Consequently, the

plaintiffs filed suit for declaration that the partition proceedings which were initiated on 18.1.2009 and decided on 11.5.2010 and *sanad taksim* and all the subsequent proceedings including mutation No.3028 and subsequent revenue entries are illegal, null & void and not binding on the plaintiffs with regard to the suit land.

4. The suit was contested by defendant No.1 and the said defendant took plea that in the partition proceedings which were initiated at the instance of the answering defendant, notice was sent but the plaintiffs failed to appear before the concerned revenue authorities despite their due service and accordingly, plaintiff No.1 was proceeded against *ex parte* on 17.3.2009 while plaintiff No.2 was proceeded against *ex parte* on 27.1.2009 and the application for partition filed by the answering defendant was finally decided on 11.5.2010 and thereafter, warrant of possession was duly executed and resultantly, mutation No.3028 was also entered in the revenue record. The answering defendant also took plea that no appeal or revision was filed by the plaintiffs against the order passed by the AC, 1st Grade, Kaithal regarding partition of the suit land as per provisions of Section 13 of Punjab Land Revenue Act (as applicable in the State of Haryana) (in short, “the Act”). It was further pleaded that the Civil Court is having no jurisdiction to entertain and try the suit as the same is barred under Section 158 of the Act.

5. On the pleadings of the parties, the following issues were framed by the learned trial Court in the case : -

1. Whether the plaintiff is entitled for the decree of declaration and permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD

3. Whether the plaintiff has no cause of action and locus standi to file the the present suit? OPD

4. Whether suit is time barred? OPD

5. Whether the Civil Court has no jurisdiction to try the present suit? OPD

6. Relief.

6. In order to prove the case, plaintiff No.1 stepped into the witness box as PW1 and also examined PW2-Ramesh Chand, Record Keeper, Record Room DC Office, Kaithal and PW3- Kuldeep Singh, Halqa Patwari. The plaintiffs also produced copy of order of partition Ex.PA, copy of Naksha Kha Ex.PB and Ex.PC, copy of Naksha Zim Ex.PD, copy of Naksha Bay Ex.PE, copy of Naksha Zim Ex.PF, copy of *Khasra Girdawari* Ex.PF, *Sanad Taksim Araji* Ex.PH, copy of Rapat Vakyati Ex.PI, copy of mutation Ex.PJ and Naksha Taksim Ex.PK.

7. On the other hand, counsel for defendant No.1 examined DW1-Hawa Singh, DW2-Ramesh Chand, Record Keeper, Record Room, DC Office, Kaithal and DW3-Dhoop Singh, Retired Naib Tehsildar and also tendered copy of execution application Ex.DA, copy of warrant of possession Ex.DB, copy of letter written by Field Kanungo to Halqa Patwari Ex.DC, Copy of order of AC 1st Grade, Kaithal Ex.DD, copy of proceedings dated 2.6.2011 Ex.DE, copy of jamabandi for the year 2005-06 Ex.DF, copy of jamabandi for 2010-2011 Ex.DG and copy of Khasra Girdawari Ex.DH.

8. On appraisal of evidence, the learned trial Court while taking into notice provisions of Sections 13 and 158 of the Act, held that the jurisdiction of Civil Court is expressly barred to deal with the suit and issues No.1, 2, 3 and 5 were decided against the plaintiffs and consequently,

the suit was dismissed. The appeal preferred by the plaintiffs against the judgment and decree dated 30.9.2016 passed by the learned trial Court was also dismissed by the Court of Additional District Judge, Kaithal vide judgment dated 30.8.2017 whereby the findings recorded by the learned trial Court were affirmed.

9. Being aggrieved, the plaintiffs have filed the present appeal against the judgments passed by both the Courts below.

10. Counsel for the plaintiffs, while challenging the findings recorded by the learned trial Court and the first Appellate Court, *inter alia* submits that the partition proceedings conducted by the revenue authorities with regard to partition of the suit land are not binding on the plaintiffs as no notice of the said partition proceedings was ever issued by the revenue authorities and the entire proceedings were conducted at the back of the plaintiffs and that entire partition proceedings being null and void, the Civil Court is having jurisdiction to entertain and try the suit.

11. I have considered the submissions made by the counsel for the appellants.

12. During arguments, counsel for the plaintiffs took the plea that notice regarding partition proceedings was not received by the plaintiffs and that someone else thumb marked the notice impersonating as plaintiffs. However, no specific plea with regard to any such fraud was taken by the plaintiffs in their plaint and further, the plaintiffs failed to lead any cogent and convincing evidence during the trial to prove the plea of fraud.

13. Admittedly, the partition proceedings have attained finality and the plaintiffs have approached the Civil Court without availing the remedy available to them under Section 13 of the Act.

14. One of the contentions raised by the counsel for the plaintiffs is that the Civil Court has jurisdiction to entertain the suit of the plaintiffs seeking setting aside of the *ex parte* partition proceedings conducted by the revenue officer. Section 158 of the Act specifically exclude the jurisdiction of the Civil Courts in matters within the jurisdiction of the revenue officers. In order to challenge the order passed by A.C., 1st Grade, Kaithal, the plaintiffs were having statutory remedy of filing an appeal to the Collector, as per Section 13 of the Act but the said remedy was not availed by the plaintiffs to challenge the partition proceedings. Further, Section 158 (xvii) specifically provides that a civil Court shall not exercise jurisdiction over any claim for partition of an estate, holding or tenancy or any question connected with or arising out of, proceedings for partition, not being question as to title in any of the property of which partition is sought. Admittedly, in the instant case, question of title has not been decided by the revenue officer during the partition proceedings.

15. In view of above, this Court is of the view that the Courts below rightly held that the Civil Court is having no jurisdiction to entertain and try the suit filed by the plaintiffs. Consequently, the concurrent findings recorded by both the Courts below are hereby affirmed. No question of law muchless substantial question of law arises for consideration before this Court.

16. The appeal stands dismissed.

(KARAMJIT SINGH)
JUDGE

October 11, 2023

Paritosh Kumar