

CR-235-2022 (O&M)

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2024:PHHC:036567

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

CR-235-2022 (O&M)

Date of decision: 12.03.2024

Kesar Kaur and others

....Petitioners

Versus

Jeet Singh @ Ajeet Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sherry K Singla, Advocate for the petitioners

Mr. Rahul Garg, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. Through this revision petition, the defendants assail the correctness of the order passed by the trial court while dismissing her application to reject the plaint in exercise of the powers under Order VII Rule 11 of the Code of Civil Procedure, 1908. In substance, the petitioners claim that the civil court has no jurisdiction to entertain and decide the suit questioning the order partitioning the property by the competent authority under the Punjab Land Revenue Act, 1887 (hereinafter referred to as '1887 Act').

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the petitioners contends that the suit property is an agricultural land and the plaintiffs (respondents herein) filed the appeal as well as revision petition against the order of

the partition. He further contends that under Section 158 of the 1967 Act the jurisdiction of the civil court is barred.

4. On the other hand, the learned counsel representing the respondents submits that the matter ultimately got decided by the Financial Commissioner, wherein the revision petition was disposed of with the observations that the parties have already approached the court. He submits that the petitioners were party to the aforesaid revision petition before the Financial Commissioner.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. Under the 1887 Act, the court of Assistant Collector is entitled to partition the agricultural land, however, places of workshop, burial grounds, any embankment, water course, any land which is used for supply of water, grazing ground and any land which is occupied as a site of a town or village may be refused by the revenue authorities. In this case, the plaintiffs, while filing the suit have asserted as under:-

“4. That the defendants No.1 to 3 with the malafide intention filed the partition application before the defendant No.4 Naib Tehsildar exercising the powers of AC Ist Grade, Nangal. The defendant No.4 was fully aware that the residential houses of the parties are existing in the suit property and thus he was not having the jurisdiction to partition the Abadi land, but despite objections by the plaintiffs, the defendant No.4 in active connivance with the defendants No. 1 to 3 has wrongly and illegally partitioned the suit land vide order dated 27/12/2018, of which he had/has no right to do so.”

7. Thus, the plaintiffs are alleging that the Assistant Collector First Grade had no jurisdiction to partition the property. The plaintiffs

are claiming that the order partitioning the property passed by the Assistant Collector First Grade is without jurisdiction.

8. A plaint can be rejected only if the court is in a position to come to a conclusion that the suit is barred by law. There are various grounds for rejection of the plaint under Order VII Rule 11 CPC. As per clause (d), a plaint can be rejected only where the suit appears, from the statement in the plaint, to be barred by law. At this stage, from the reading of the plaint, it is not correct to conclude that the suit is barred by law.

9. Keeping in view the aforesaid facts, no ground to interfere is made out. Hence, dismissed. However, it shall be open to the petitioners to pray for framing of a distinct and separate issue with regard to their objections.

10. Disposed of.

11. All the pending miscellaneous applications, if any, are also disposed of.

12.03.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE