

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-1108-2019 (O&M)****Reserved on : 21.10.2024****Pronounced on : 29.10.2024**

Ram Dass

....Appellant

VERSUS

Tek Chand (deceased) & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Vamika Johar, Advocate for
Mr. Pritam Singh Saini, Advocate for the appellant.

ALKA SARIN, J.**CM-2687-C-2019**

1. For the reasons mentioned therein, the application for condoning the delay of 8 days in filing the present appeal is allowed. The delay of 8 days in filing the present appeal is condoned.

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2. The present regular second appeal has been preferred by defendant No.1-appellant challenging the judgments and decrees dated 20.03.2015 and 02.07.2018 passed by the Trial Court and the First Appellate Court respectively.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for possession by way of partition of the suit land measuring 48 Kanals 17 Marlas. It was averred by the plaintiff-respondent No.1 that the suit land was joint between the parties and that the plaintiff-respondent No.1 had purchased his share from Sunita Rani (wife of

Karam Chand) and Smt. Shakuntla Devi (wife of Ram Kishan) vide registered sale deed dated 06.02.2002 and mutation had also been sanctioned in his favour. The share of the plaintiff-respondent No.1 was 100/977 while the rest of the suit land belonged to the other co-sharers. As per the plaintiff-respondent No.1 the suit land had not been partitioned as yet by any court of law and the consent of the parties. It was averred that the defendants were cunning persons who wanted to alienate the land more than their share with specific portions and wanted to raise construction on the joint land without getting it partitioned. Hence, the suit. The suit was contested by several of the defendants including the defendant No.1-appellant who is the real brother of the plaintiff-respondent No.1. In the written statement preliminary objections regarding maintainability, locus standi, cause of action, estoppel, mis joinder and non-joinder of parties, suppression of material facts, deficiency of court fee and lack of jurisdiction etc. It was the stand taken that the suit land had already been partitioned by way of oral partition between the share-holders and was not joint. It was alleged that the plaintiff-respondent No.1 was never in possession of the suit land and that all the co-shares were in possession of their respective shares and were enjoying the same by raising construction. It was further stated that the defendants were exclusive owners in possession of their respective shares as per the partition and that the suit land had been partitioned by the consent of the parties and every co-sharer was in specific possession of his share. Both the brothers i.e. the plaintiff-respondent No.1 and the defendant No.1-appellant were cultivating their land which came to their share. No replication was filed by the plaintiff-respondent No.1.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for the relief of possession by way of partition of gair mumkin land measuring 5 kanal 0 marla of plaintiff out of the total land measuring 48 kanal 17 marla (as detailed in the head note of the plaint) as prayed for ? OPP
2. Whether the plaintiff is entitled for the relief of permanent prohibitory and mandatory injunction to the effect that the defendants be restrained from alienating the land more than their share or specific portion and from raising any construction over the suit land without getting the same partitioned, as prayed for ? OPP
3. Whether the suit of plaintiff is not maintainable and he has no locus standi or cause of action to file or maintain the present suit ? OPD
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
5. Whether this court has got no jurisdiction to try or entertain the present suit ? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties ? OPD
7. Whether the plaintiff has concealed the true and material facts from the court ? OPD

8. Whether the suit is bad for non-affixation of proper court fee on the relief claimed ? OPD

9. Relief.

5. The Trial Court decreed the suit vide judgment and decree dated 20.03.2015 and passed a preliminary decree. Aggrieved by the judgment and decree dated 20.03.2015 an appeal was preferred by the defendant No.1-appellant as well another appeal by some other defendants. However, both the appeals were dismissed by the First Appellate Court vide a common judgment dated 02.07.2018. Hence, the present regular second appeal by defendant No.1-appellant.

6. The learned counsel for the defendant No.1-appellant would contend that both the Courts have erred in passing a preliminary decree of partition. It is urged that the suit land already stood partitioned, and all the parties were in possession of their respective shares and therefore the suit deserved to be dismissed.

7. Heard.

8. In the present case the stand of the defendant No.1-appellant was that the suit land already stood partitioned among the co-owners by way of an oral partition and that all the co-owners were in possession of their respective shares. However, apart from the oral testimonies of the witnesses to buttress the plea of an oral private partition, no other evidence was produced by the defendant No.1-appellant. Although co-owners of land can privately partition their shares, the same has to be recorded in the revenue record also. In case private partition had been effected, the revenue officers would have allotted a separate khewat to each co-owner. A partition is

recorded by allotting separate khewats thereby indicating severance of the joint status of parties. There is nothing forthcoming to prove any such severance of status or private partition. The Trial Court recorded that “ But *there is no evidence on record to show that any partition took place between the previous owners of the suit land. There is no evidence to show as to when the alleged partition took place between the parties*”. The First Appellate Court also found that “ *A perusal of copy of sale deed No.3285 dated 06.02.2002 (Ex.PW1/E) shows that plaintiff Tek Chand (since deceased) had purchased the land measuring 5 kanal 0 marla i.e. 100/977 share out of the land measuring 48 kanal 17 marla of khewat No.1438 and khatoni No.1838 from Sunita Rani and Smt. Shakuntla Devi for the sale consideration of Rs.1,06,500/-. A further perusal of jamabandi for the year 2006-07 (Ex.PW1/B) shows that the suit land measuring 48 kanal 17 marla is gair mumkin land and the same is joint between the co-sharers and plaintiff Tek Chand (since deceased) is joint owner in possession of the suit land to the extent of 100/977 share. From the aforesaid documentary evidence led by the plaintiffs, it is clearly evident that the suit land is joint between the parties and the same has not been partitioned by any court of law. Even there is no evidence on record to show that any oral partition has ever taken place between the previous owner of the suit land*”. Learned counsel for the defendant No.1-appellant has been unable to point to any cogent and reliable evidence on the record to prove the allegation of the suit land having already been partitioned. No other point was argued.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises

in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.10.2024

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO