

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2047 of 1990 (O&M)

Date of Order:16.02.2024

Fauja Singh

.Appellant

Versus

Shangara Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Varun Parkash, Advocate
for the appellant.ANIL KSHETARPAL, J

1. In this regular second appeal, the plaintiff assails the correctness of the judgment and decree passed by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court.

2. On 16.09.2016, the learned counsel representing the appellant proposed the following substantial questions of law:-

“(i) Whether in the facts and circumstances of the instant case the approach of the learned First Appellate Court in reversing the judgment of the ld. Trial court by misreading and misinterpreting the material oral and documentary evidence on record is not perverse?

(ii) Whether in the facts and circumstances of the instant case the ld. First Appellate Court has erred in law in dismissing the suit of the appellant on mere conjectures and surmises despite the positive evidence led by the appellant to prove the oral family partition, can be sustained in law?

(iii) Whether in the facts and circumstances of the instance case the approach of the ld. Appellate Court in declining the relief to the plaintiff despite the admitted fact that the plaintiff was not party to the partition proceedings, is not

perverse?

(iv) Whether in the facts and circumstances of the instant case the ld. First Appellate Court has erred in law in ignoring the specific recitals regarding the family partition in the sale deeds executed by the defendants?"

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed

3. The plaintiff no.1 (appellant herein) filed a suit for grant of decree of declaration that the plaintiff is owner in possession of 8 kanals land comprised in khewat no.127, khatoni no.136, Rect. No.78, Khasra No.11, as per the jamabandi for the year 1979-1980, and the order dated 20.02.1986, passed by the Assistant Collector Ist Grade, partitioning the land without issuing notice to him is illegal, null and void.

4. In substance, the plaintiff claims that he has purchased the aforesaid land vide registered sale deed dated 19.01.1982, from Sh. Santokh Singh, son of Sh. Jagat Singh, on payment of Rs.4,000/-. However, the defendants, namely, Sh. Santokh Singh (the plaintiff's vendor), Sh. Makhan Singh and Sh. Shangara Singh sons of Sh. Jagat Singh colluded and secured an order of partition from the Assistant Collector Ist Grade, wherein the land comprised in Rect. No.78, khasra no.11, has gone to the share of Sh. Shangara Singh.

5. All the three brothers, namely, Sh. Santokh Singh, Sh. Makhan Singh and Sh. Shangara, contested the suit claiming that the plaintiff is not in possession and the land was never partitioned before the sale deed in favour of the plaintiff was executed.

6. The trial court decreed the plaintiff's suit on the following

grounds:-

- (1) The plaintiff was not a party to the proceedings for partition of the property filed before the Assistant Collector on 10.04.1985, which was decided on 20.02.1986.
- (2) The mutual partition between the three brothers is proved from perusal of three sale deeds executed by defendant no.1. Defendant no.1, executed the sale dated 19.01.1982, Ex.P1, in favour of the plaintiff, wherein it was recited that the land has been mutually partitioned between three brothers. Subsequently, Sh. Santokh Singh also executed two more sale deeds Ex.P5, and Ex.P6, in favour of defendant no.3-Sh. Shangara Singh (the brother), wherein it was specifically recited that the land has been mutually partitioned. Hence, subsequent proceedings for partition of the property were arbitrary and intended to defraud the plaintiff.

7. However, the First Appellate Court reversed the judgment passed by the trial court on the following grounds:-

- (1) In the revenue record the property continues to be reflected as joint property.
- (2) The mutation entry in favour of the plaintiff with respect to the sale deed dated 19.01.1982, was sanctioned only on 16.08.1985, whereas the application for partition of the land was filed on 10.04.1985. The plaintiff's name did not appear in the revenue record and therefore he was not

made party to the partition proceedings.

8. The respondents have chosen not to enter appearance despite service of notice.

9. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paper book.

10. The learned counsel representing the appellant submits that from perusal of the sale deeds Ex.P1, Ex.P5 and Ex.P6, it becomes evident that the property was mutually partitioned between the three brothers and therefore, there was no occasion for filing yet another suit for partition.

11. This court has considered the submissions of the learned counsel representing the appellant.

12. In the considered opinion of this Court, the judgment and decree passed by the First Appellate Court suffers from errors and perversity and therefore it is liable to be set aside on the following grounds:-

- (1) The revenue record maintained by the State Government agencies carries a rebuttable presumption. Sh. Santokh Singh, vendor of the appellant executed as many as three sale deeds Ex.P1, Ex.P5 and Ex.P6. In all these three sale deeds, it has been recited that the property stood mutually partitioned. The mode of mutual partition of the agricultural land is one of the recognized modes of partitioning the property and it is not necessary that the same must be reported to the revenue authorities. Once the parties decide to partition the property by metes and bounds as a consequence of the partition their status is severed. Even if there is no entry in the revenue record

evidencing the partition of the suit property, still the status of the parties as the co-sharers won't be revived. Reliance in this regard can be placed on the judgment passed in *Ajmer Singh vs. Dharam Singh, 2006(143) PLR 25.*

- (2) The second reason recorded by the First Appellate Court is also erroneous. The plaintiff became the owner of the suit property by virtue of sale deed dated 19.01.1982. Even if his name was not reflected in the revenue record, he became the owner of the property on the date the sale deed was executed and registered. In these circumstances, the First Appellate Court has erred in observing that the plaintiff was not required to be impleaded as a party in the partition proceedings as his name was not reflected in the revenue record. The entry in the revenue record is only meant for the purpose of updation of the records maintained by the State Government. The revenue entries do not determine the rights of the parties. The plaintiff became owner in January, 1982, whereas the application for partition was filed on 10.04.1985. In absence of the plaintiff, the order, if any, passed by the Assistant Collector Ist Grade is not binding on the rights of the plaintiff.
- (3) Moreover, defendant no.1 Sh. Santokh Singh has executed two sale deeds in favour of defendant no.3-Sh. Shangara Singh. In both the sale deeds, it has been

recited that the property has already been mutually partitioned. Subsequently, neither defendant no.1 nor defendant no.3 could be permitted to take a U-turn and allege that the land has not been partitioned. The plaintiff is a purchaser for valuable consideration. He has purchased the property after it was recited in the sale deed that the property has been partitioned by metes and bounds, hence, he could not be deprived of the property which he has purchased by him through a registered sale deed.

13. Keeping in view the aforesaid facts and discussion, the aforesaid questions are answered in favour of the appellant. The judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

14. The regular second appeal is allowed.

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

February 16, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO