



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2361-1990 (O&M)
Reserved On: 19.11.2024
Date of Order:02.12.2024

Smt. Barfi (since deceased) through LRs

.Appellant

Versus

Phul Gir and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Giri, Advocate
for the appellant.

Mr. Aditya Jain, Advocate and
Mr. Rahul Vohra, Advocate
for respondent nos.11 and 12.

ANIL KSHETARPAL, JUDGE (Oral)

1. In this Regular Second Appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the Courts below while partly decreeing her suit for grant of decree of declaration that she is owner in possession of 3/80th share which is equivalent to 44 kanals and 10 marlas while refusing to grant declaration that the instrument of partition prepared by the competent authority is illegal.

2. In the States of Punjab and Haryana, the partition of the agricultural land comprised in joint khewat is carried out in accordance with the Punjab Land Revenue Act, 1887, which enables the Assistant Collector Ist Grade to partition the land. Some of the co-sharers filed the partition proceedings which were finalized on 20.02.1984. Ultimately the possession was also delivered. Subsequently, the plaintiff filed a suit claiming that the partition proceedings and the final order passed is illegal, null and void and



not binding upon her. She claims that she was never given an opportunity to appear in the aforesaid proceedings.

3. Both the courts have concurrently found that the plaintiff was duly served with the notice of the partition proceedings by local proclamation. The courts have also found that the plaintiff has been allotted land equal to her share in the partition proceedings.

4. This court has heard the learned counsel representing the parties and perused the record.

5. The learned counsel representing the appellant submits that the plaintiff has not been delivered possession of the property which has been allotted to her and her possession has been disturbed. He submits that no effort has been made to serve the appellant by personal service.

6. Per contra, the learned counsel representing the respondents while drawing the attention of the Court to Ex.P6, the instrument of partition, submits that the appellant has been allocated land as per her share.

7. The learned counsel representing the appellant has tried to make out a new case in the Regular Second Appeal. Before both Courts, the plaintiff neither alleged that he has not been allotted land commensurate to her share nor she has alleged that no efforts were made to serve the appellants by personal service. The defendants in order to prove that the plaintiff had the knowledge of the partition proceedings have examined two official witnesses, namely, DW1 and DW2, who have stated that the local proclamation(munadi) was carried out by them in the village. Both the courts have also found that the appellant is owner of 3/80th share in the joint land.



8. The last argument of the learned counsel is with regard to disturbance of possession. It may be noticed that while partitioning the land, the partition of land comprised in entire khewat is required to be partitioned equally while keeping in view the quality of land, value and irrigation facilities. The partition proceedings remained pending for seven years. Ordinarily the jurisdiction of the civil court is barred under Section 158 of the 1887 Act. The appellant has a remedy of filing an appeal against the order of partition. In absence of patent illegality in following the procedure laid down under the '1887 Act' while partitioning the land, the civil court is not expected to interfere. The appellant cannot be permitted to make out a new case for the first time in the regular second appeal.

9. Consequently, finding no merit, the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

02nd December, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No