



Date of decision : 17.05.2024

...Appellants

Vs.

...Respondents

Present: Mr. Ashok Kumar Verma, Advocate
for the appellants.

Mr. Rajeev Godara, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. In this regular second appeal, the defendants assail the correctness of the judgment passed by the First Appellate Court which in turn has reversed the judgment passed by the trial Court.

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

3. The respondents (plaintiffs in the suit) filed a suit for possession by way of superior right of pre-emption on the ground that they are the co-sharers in the joint land. Sh. Mani Ram s/o Sh. Sheo Lal sold land measuring 08 kanals vide registered sale deed dated 31.01.1989, to Sh. Des Raj, Sh. Hans Raj son of Sh. Baga Ram, Sh. Purkha Ram, Sh. Ram Chander and Budh Ram sons of Surja Ram. It was claimed by the plaintiffs (respondents herein) that the sale deed has been executed without any notice to them. The defendants

(appellants herein) while contesting the suit claimed that the suit land has



already been partitioned mutually, however, the same was not incorporated in the revenue record, for which, a partition application is still pending.

4. The trial Court dismissed the suit, however, before the First Appellate Court, the respondents (the plaintiffs) produced a certified copy of the order dated 23.03.1992, passed by the Collector, Sirsa while setting aside the order passed by the Assistant Collector suggesting the mode of partition. On the aforesaid basis, the Court came to a conclusion that on 30.08.1991, i.e. the date of the trial Court's judgment, the partition was not complete and there was no severance of status between the co-sharers. Consequently, the appeal was allowed resulting in filing of this Regular Second Appeal by the defendants.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. Learned counsel representing the appellants while referring to agreement 'Ex.D3' submits that there was a mutual partition of the land. He further submits that vide Ex.D4/3, the suit land was partitioned and allocated to Sh. Purkha Ram, Sh. Ram Chander and Sh.Budh Ram. Hence, the partition was complete. He further submits that the order passed by the Collector in the year 1992 has been passed subsequent to the judgment passed by the trial Court. Hence, the order passed by the Collector cannot be taken into account while allowing the plaintiff's appeal.

7. *Per contra*, the learned counsel representing the respondents submits that the defendants themselves have filed an application for partition of



the land under Section 111 of the Punjab Land Revenue Act, 1887, on 13.03.1990. Moreover, no document has been produced by the defendants to prove that '*Naksha Be*' was ever sanctioned before the judgment passed by the trial Court. He submits that the case of the defendants that the suit land has been mutually partitioned is not proved because it is the defendants who filed the application for partition under Section 111 and not under Section 122 of the Punjab Land Revenue Act, 1887. He further submits that the order passed by the Assistant Collector proposing the mode of partition was set aside by the Collector on 23.03.1992. Hence, there was no severance of status of the co-sharers.

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

9. The 'Ex. D-3' is only an agreement to sell executed by Sh.Mani Ram in favour of Sh.Purkha Ram etc. In the aforesaid agreement, it has been recited that there is a mutual partition. However, this document is not signed by the remaining co-sharers. It is for this reason, the defendants filed an application Ex.D-9 on 13.03.1990 with a prayer for partitioning the land.

10. Another document relied upon by the learned counsel representing the appellants is Ex.D-1, which is a copy of the sale deed. This sale deed has been executed by Mani Ram in favour the defendants. Any recital of mutual partition in the sale deed to which the plaintiff is not a party shall not bind the non-signatory co-owners. This sale deed was executed on 31.01.1989, whereas, the defendants filed an application for partition Ex.P-9 on 13.03.1990. If the property had already been partitioned, the defendants would not have filed an

application for partition in the Court of the Assistant Collector, Grade-I, Sirsa.

11. The order dated 23.03.1992, passed by the Collector produced before the First Appellate Court clearly proves that the order passed by the Assistant Collector proposing the mode of partition has also been set aside by the Collector. Further proceedings can take place only after the mode of partition is approved. The approval of the mode of partition is only a preliminary stage of the partition proceedings. After getting the list of the owners and their respective shares, the Revenue Authority directs the Revenue Officer to propose a mode of partition. After the mode of partition is approved, the objections are invited, which are decided. The ‘*Naksha Be*’ is sanctioned only after the objections are decided by the competent authority and the Court.

12. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

13. The appeal stands dismissed.

17.05.2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No