

RSA-1894-1992

2024:PHHC:033842

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

**RSA-1894-1992 (O&M)
Reserved on : 04.03.2024
Pronounced of : 11.03.2024**

MAJOR NIRMAL SINGH SIDHU AND OTHERSAppellants

VERSUS

GURDIT SINGH AND OTHERSRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arun Bansal, Advocate
Mr. Anubhav Bansal, Advocate and
Ms. Bharti, Advocate for the appellants.

Mr. Amrindra Pratap Singh, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant-appellants (defendant Nos.1 to 8, 10 and 11 in the suit) challenging the judgments and decrees dated 21.12.1987 and 07.05.1992 passed by the Trial Court and the First Appellate Court, respectively.

2. The brief facts relevant to the present case are that plaintiff-respondent Nos.1 to 3 herein filed a suit for permanent injunction for restraining the defendant-appellants from interfering in any manner in the peaceful possession of plaintiff-respondent Nos.1 to 3 and that of defendant Nos.12 to 17 in the suit. The case set up by plaintiff-respondent Nos.1 to 3 was that Khasra No.9 fell to the share of Seda Singh in the year 1869 and plaintiff-respondent Nos.1 to 3 and defendant Nos.12 to 17 were descendants of said Seda Singh. It is further the case set up that ever since partition was effected in the year 1869, Seda Singh and his descendants had

been in possession of the suit property. It is further the case that eight Kiker trees and one Neem tree was standing on the plot. The defendant-appellants, who had nothing to do with the plot in dispute, were basing their unfounded claim that the plot in dispute, which originally came to the share of Seda Singh and others, had infact come to the share of the others and that the defendant-appellants were the successors-in-interest of the others.

3. The defendant-appellants filed their written statement raising various preliminary objections. On merits it was averred that the suit property was never allotted to Seda Singh and it was the joint property but because of mutual partition amongst the co-sharers the defendant-appellants were in exclusive ownership and possession of the suit property. Replication was filed reaffirming the averments made in the plaint and controverting those made in the written statement.

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

1. Whether the suit properties fall to the share of Seda Singh as alleged ? OPP
2. Whether the plaintiffs and defendants No.12 to 17 are the descendants of Seda Singh and the pedigree table given by the plaintiffs is correct ? OPP
3. Whether the plaintiffs have been in possession of the suit property along with defendants No.12 to 17 as successors of interest of Seda Singh ? OPP

4. Whether the father's name of Rajinder Singh has been wrongly given as Gurbachan Singh, if so its effect ? OPP
5. Whether the suit is bad for non-joinder of necessary parties ? OPD
6. Whether the suit is bad for mis-joinder of Surjit Singh ? OPD
7. Whether the suit in the present form is not maintainable ? OPD
8. Whether the plaintiffs are entitled for the injunction prayer for ? OPP
9. Relief.

5. The Trial Court decreed the suit vide judgment and decree dated 21.12.1987. Aggrieved by the same an appeal was preferred which was dismissed by the First Appellate Court vide judgement and decree dated 07.05.1992. Hence, the present regular second appeal by the defendant-appellants.

6. Learned counsel for the defendant-appellants would contend that the suit property was allotted to Seda Singh and others in partition and hence the defendant-appellants, who claim through the others, could not have been restrained by the Court by decreeing the suit.

7. *Per contra*, learned counsel for the plaintiff-respondent Nos.1 to 3 would contend that no evidence was led by the defendant-appellants and in view of the overwhelming evidence led by the plaintiff-respondents No.1 to 3 the suit was rightly decreed.

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8. Heard.

9. Both the Courts had held that plaintiff-respondent Nos.1 to 3 had been able to prove their ownership of the suit property. Ex.P-1 is a copy of the report according to which plot No.9, of which the old number was 915, was shown in the ownership of the plaintiff-respondent Nos.1 to 3. Ex.D-1 is copy of the order vide which the partition was effected in a case bearing No.38 of 18.10.1869 which was filed by Seda Singh. Old Khasra No.915 fell to the share of Seda Singh. Ex.D-2 is the Shajra prepared after partition. According to the said document (Ex.D-2) Khasra No.9 was allotted to Seda Singh. Ex.P-X and Ex.P-Y also show that old Khasra No.915 was allotted to Seda Singh. Not a single document has been referred to by the learned counsel for the defendant-appellants in order to show that Khasra No.9, the old Khasra number of which was 915, was allotted to the predecessors-in-interest of the defendant-appellants. Nothing material has been pointed out by the counsel for the defendant-appellants for this Court to interfere with the concurrent findings recorded by both the Courts. No other point was argued.

10. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.03.2024

Aman Jain

(ALKA SARIN)

JUDGE

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