

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 745 of 1994

Date of Decision: 11.03.2024

Raj Pal Singh

... Appellant(s)

Versus

Pargat Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashok Kumar Verma, Advocate
for the appellant(s).

Mr. G.S.Dhaliwal, Advocate
for respondent No.1 to 4.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. This is the plaintiff's second appeal against the judgment and decree passed by the First Appellate Court. He has filed a suit for possession by way of pre-emption on the ground that he, being a co-sharer, has a superior right to pre-empt the sale deed executed by defendant No.6 in favour of defendant No.1 to 4 on 07.01.1986 with respect to the land measuring 32 kanals and 16 marlas out of the total land measuring 196

kanals and 19 marlas. The defendants contested the suit on the ground that the plaintiff is not a co-sharer and defendant No.5 is in possession of the suit land as a lessee. Moreover, defendant No.1 to 4 filed the partition suit and proceedings of the said suit have been completed. The Trial Court decreed the suit on the ground that the instrument of partition has not been prepared. However, the First Appellate Court found that *Naksha Bey* has been finalized and appeal against the same was dismissed vide order dated 25.08.1989. Thus, the First Appellate Court accepted the appeal.

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

4. The learned counsel representing the appellant submits that the instrument of partition has not been prepared and severance of status between the co-sharers would be completed only on the preparation of the statement of partition. He further submits that vide order dated 07.06.1989, respondent No.13 in the partition proceedings was granted an opportunity to file a written statement against which the defendants filed an appeal which was dismissed by the Assistant Collector 1st Grade vide order dated 25.08.1989. Subsequently, the respondents filed the revision petition before the Commissioner which was further recommended for acceptance to the Financial Commissioner vide order dated 24.12.1991. However, he has no knowledge of further development. He, hence, submits that the partition proceedings were not final.

5. This Court has considered the submissions of the learned counsel representing the parties.

It is evident that the *Naksha Bey*, on 18.10.1988, has never been

set aside. Moreover, the learned counsel representing the appellant has failed to disclose the current status of the matter which was recommended to the Financial Commissioner by the Commissioner. In the recent judgment passed by the Supreme Court in *Jhabbar Singh (Deceased) through Legal Heirs and Others v. Jagtar Singh son of Darshan Singh* 2023(1) ARC 812, it has been held that the preparation of instrument of partition is an executive function and the status of the parties as co-owners comes to an end on preparation of *Naksha Bey* after hearing the objections of the parties. Though the Supreme Court has referred to the mode of partition in one of the paragraphs, however, on careful reading of of the judgment, it is evident that the reference is to the preparation of *Naksha Bey* which is prepared while deciding the objections filed by the parties to the *Naksha Alif*.

7. Moreover, the right to pre-empt the land is a weak and outmoded right. This has been recognized by the Courts in *Atam Parkash vs. State of Haryana (1986) 2 SCC 249*, wherein the Supreme Court has also noticed this fact and held that allowing the plaintiff to pre-empt the sale deed would be inequitable.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned judgment passed by the First Appellate Court. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

March 11, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No