



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

113

RSA-5096-2019 (O&M)**Date of Decision : 01.08.2024**

MOHINDER KAUR @ RUPINDER KAUR

.... Appellant

VERSUS

SURINDER PAL SINGH & ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Anamika Sheoran, Advocate for
Mr. Vikas Singh, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 31.01.2017 passed by the Trial Court and dated 08.12.2018 passed by the First Appellate Court whereby the suit of the plaintiff-appellant as well as her appeal were dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondents from changing the nature of the suit property by raising construction as also from restraining defendant-respondents No.3 and 4 from further selling or alienating any specific portion or more than their share out of the land measuring 8 Kanals 0 Marlas as also from restraining defendant-respondents No.1 and 2 from selling or alienating any specific portion or more than their share out of the land measuring 59 Kanals 3 Marlas as also for a declaration to the effect that the sale deed dated 25.04.2008 executed qua land measuring 8 Kanals 0 Marlas was wrong, false, fictitious and

without consideration. The case set up by the plaintiff-appellant was that the parties to the *lis* were co-sharers and partition proceedings were going on and that the defendant-respondents be restrained from carrying out construction till finalization of the partition proceedings as also to challenge the sale deed dated 25.04.2008.

3. The defendant-respondents No.1 and 2 contested the suit raising preliminary objections regarding *locus standi*. It is further contended that the land stood partitioned amongst them in the year 1975 and that thereafter a memorandum of partition also came in existence which was signed by all the sons of Jagat Singh and the same was reduced into writing. It is further the case that the suit property was in physical possession of defendant-respondents No.1 and 2. Defendant-respondents No.3 and 4 filed their separate written statement taking preliminary objections that the property already stood partitioned by way of oral partition and to this effect a memorandum of partition was also effected in writing on 01.04.1975 and the possession was exchanged on the spot. They further stated that they had purchased the property after verifying the memorandum of partition dated 01.04.1975.

4. Replication was filed denying the averments made in the written statements and reiterating those made in the plaint.

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

1. Whether plaintiffs are entitled for permanent injunction as prayed ? OPP

2. Whether plaintiffs are entitled for declaration as prayed ? OPP
3. Whether plaintiffs have no locus standi to file the present suit ? OPD (3 and 4)
4. Whether the plaintiffs have concealed the material facts from the Court, if so, its effect ? OPD (1 and 2)
5. Whether the suit is false and frivolous and the same is liable to be dismissed with special costs of ₹10,000 ? OPD (1 and 2)
6. Whether the defendants No.3 and 4 are bona fide purchasers for consideration ? OPD (3 and 4)
7. Whether the defendants No.3 and 4 are in possession of specific land ? OPD (3 and 4)
8. Whether the suit is not property valued for the purposes of Court fee and jurisdiction ? OPD (3 and 4)
9. Relief.

6. The Trial Court dismissed the suit after returning a finding that *Sanad Takseem* had already been prepared and that the partition proceedings have already attained finality and in view thereof the suit itself was not maintainable. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court. Hence, the present regular second appeal by the plaintiff-appellant.

7. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing her suit. It is urged that the defendant-respondents were selling specific portions of land and that the land had not been partitioned.

8. Heard.

9. In the present case the Trial Court has held that the land already stood partitioned between the parties and that *Sanad Takseem* had also been prepared. The First Appellate Court has also returned a finding that partition proceedings were already pending and while placing reliance upon the judgment in the case of **Bhartu Vs. Ram Sarup, [1981 PLJ 204]** held that a sale made by a co-sharer would be considered as sale out of his share and the same would not effect the rights of the co-sharers and hence the sale deed could not be held to be null and void. Learned counsel for the plaintiff-appellant has not been able to convince this Court that partition proceedings have not been effected especially when the *Sanad Takseem* already stood drawn up. The learned counsel has been unable to convince this Court that the suit itself was maintainable. No other point has been urged.

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

01.08.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No