

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**129****RSA No.1770 of 2023****Reserved on : 20.02.2024****Date of Decision : 26.02.2024**

Akhtiar Singh and Others

....Appellants

VERSUS

Daljit Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.S. Sekhon, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants against the judgment and decree dated 05.02.2019 passed by the Trial Court and the judgment and decree dated 22.03.2023 passed by the First Appellate Court. The suit for declaration and permanent injunction filed by the plaintiff-appellants has been dismissed by both the Courts.

2. The brief facts relevant to the present case are that the plaintiff-appellants filed a suit averring therein that they along with defendant-respondent Nos.1 to 4 along with Gurdit Singh son of Sadhu Singh (since deceased) were co-sharers in the total land measuring 18 kanals 0 marla fully described in the head-note of the plaint. It was further averred that the defendant-respondent Nos.5 to 8 were in illegal possession of some portion of the suit property and had raised their houses there and that defendant-respondent Nos.6 and 7 were alleging themselves to be legal representatives of Gurdit Singh (since deceased). It was further alleged that out of the suit

property bearing Khasra No.2231/2 land measuring 3 kanals 0 marla is *gair mumkin* and some of the defendant-respondents had raised houses in the suit property and were residing there for more than 50 years. Their houses were in existence much prior to the partition application filed by the defendant-respondent Nos.1 and 2. Further, it was averred that the plaintiff-appellants and defendant-respondent Nos.1 and 2 along with Gurdit Singh were co-sharers and the order passed by the Assistant Collector Ist Grade (Tehsildar), Faridkot dated 31.05.2006 in a partition application and order passed by the Collector dated 23.05.2007 in appeal against the order dated 31.05.2006 and order dated 09.04.2013 passed by the Financial Commissioner (Revenue), Punjab against the order dated 03.12.2008 passed by the Commissioner are illegal, null and void and against the plaintiff-appellants. It was further averred that since the land measuring 3 kanals 0 marlas was recorded as *gair mumkin* and the Assistant Collector Ist Grade had no authority and jurisdiction to deal with the partition of *gair mumkin* property, hence the jurisdiction vested with the Civil Court. The defendant-respondent Nos.1 to 4 appeared while defendant-respondent Nos.5, 6 and 8 did not appear despite service and defendant-respondent No.7 is stated to have died. Defendant-respondent Nos.1 and 2 filed their joint written statement raising the preliminary objection of jurisdiction of the civil court. It was averred in the written statement that proceedings have attained finality upto the Financial Commissioner, Punjab and pursuant to the order of partition the defendant-respondent Nos.1 and 2 were delivered possession of the land measuring 1 kanal 19 marlas and mutation was also sanctioned in their favour and that they have become owners in possession of Khasra No.2231/2/1/1-19. It was further averred that after the delivery of possession in the partition

proceedings the defendant-respondent Nos.1 and 2 had filed a suit for injunction against the plaintiff-appellants and as per the judgment and decree dated 31.01.2012 they were restrained from interfering in the peaceful and exclusive possession of defendant-respondent Nos.1 and 2. Thereafter, an appeal was preferred against the said judgment and decree which was also dismissed. The other defendant-respondents also filed their written statement taking pleas qua the jurisdiction.

3. The Trial Court vide judgment and decree dated 05.02.2019 dismissed the suit of the plaintiff-appellants holding that the partition proceedings had been challenged before the Revenue Authorities and the same attained finality inasmuch as the Financial Commissioner, Punjab vide order dated 09.04.2013 upheld the order of the Assistant Commissioner Ist Grade, Faridkot. Hence, the civil court has no jurisdiction. Aggrieved by the said judgment and decree dated 05.02.2019 an appeal was preferred which appeal was also dismissed vide judgment and decree dated 22.03.2023 passed by the First Appellate Court. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellants would contend that all the co-sharers were not impleaded as a party in the partition proceedings. It is further the contention that service upon the plaintiff-appellants was not effected in the partition proceedings. Raising these pleas it has been submitted that the jurisdiction of the civil court was not barred.

5. Heard.

6. The partition proceedings in the present case were upheld upto the Financial Commissioner, Punjab. All the pleas which were sought to be raised in the suit were raised and argued before the Revenue Authorities and

stood rejected. Both the Trial Court and the First Appellate Court have observed that the order dated 09.04.2023 (Ex.P23) passed by the Financial Commissioner, Punjab reveals that grievance of the plaintiff-appellants was dealt with and the Financial Commissioner was not in agreement with the pleas raised. The plaintiff-appellants cannot be permitted to re-agitate the entire matter which stood finalized right upto the Financial Commissioner, Punjab. There is a specific bar under Section 158(2) of the Punjab Land Revenue Act, 1887 barring the jurisdiction of the civil court.

7. 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.

(ALKA SARIN)
JUDGE

26.02.2024
jk

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