

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

1. SAO-27-2010 (O&M)
Date of decision: 16.04.2024

SANTOSH KUMARI & ANR ..Appellants

Versus

URMILA KUMARI & ORS ..Respondents

2. RSA-3948-2011 (O&M)

SANTOSH KUMARI & ANR ..Appellants

Versus

MOHINDER PARTAP & ANR ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Mittal, Sr. Advocate
with Mr. Kunal Mulwani, Advocate
and Mr. Ritvik Garg, Advocate
for the appellant No.1 (in SAO-27-2010 & RSA-3948-2011).

Mr. Sudhir Aggarwal, Advocate
and Mr. Ishan Aggarwal, Advocate
for appellant No.2 (in RSA-3948-2011).

Mr. Akshay Bhan, Sr. Advocate
with Mr. Santosh Kumar Sharma, Advocate
for respondent No.1 to 8 & 12.

Mr. Amit Jain, Advocate
for respondent No.13 to 15 (in SAO-27-2010).

Mr. J.S. Pannu, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

1. Brief Facts of the case:-

1.1 With the consent of the learned counsel representing the parties,

these two connected appeals, SAO-27-2010 and RSA-3948-2011, shall stand

disposed of by a common order.

1.2 The learned counsel representing the parties are *ad idem* that the main dispute between the parties shall stand decided once SAO-27-2010 is decided. Hence, it is taken as the lead case.

1.3 In order to give the factual background of the events, relevant facts, in brief, are required to be noticed.

1.4 A total land measuring 753 kanal and 5 marlas was owned by various owners including four brothers namely Sh. Hanuman Parshad, Sh. Girraj Parshad, Sh. Mathura Parshad and Sh. Dwarka Parshad sons of Sh. Ram Chander. In the first proceedings for partition, 536 kanal and 14 marlas land was finalized and thus four brothers were allotted 86 kanal land in equal share. Thus, the share of two brothers namely Sh. Hanuman Parshad and Sh. Girraj Parshad came to 43 kanal. The aforesaid partition is final and binding between the parties.

1.5 The proceedings for partition of the remaining land measuring 216 kanal and 11 marlas is pending before the Court of Assistant Collector. The appellants before this Court claim to be the subsequent purchasers of 54 kanal and 7 marlas land derived from Sh. Hanuman Parshad and Sh. Girraj Parshad vide sale deed dated 03.05.1978. It is claimed that Sh. Hanuman Parshad and Sh. Girraj Parshad sold 54 kanal and 7 marlas land out of land measuring 215 kanal and 7 marlas to the appellants namely Smt. Santosh Kumari and Smt. Saroj Gupta. These appellants raised the question of title in the partition proceedings. The Assistant Collector, Ist Grade, sought report from the Girdawar of the area. After receipt of the Girdawar's report, the objections with regard to the question of title were dismissed and it was held that Smt. Santosh Kumari and Smt. Saroj Gupta shall only be entitled to 25

kanal and 5 marlas, equivalent to the share their vendors were entitled to.

The appellants filed appeal before the Additional District Judge under Section 117 (2) (e) of the Punjab Land Revenue Act, 1887. The same has been dismissed by the Court vide judgment dated 02.04.2010.

2. Discussion by this Court:-

2.1 This appeal has been filed against the order passed by the Additional District Judge.

2.2 On 21.02.2024, after hearing the learned counsel representing the parties, the following order was passed:-

“Heard the learned counsel representing the parties at some length.

Admittedly, the total joint holding of four brothers, namely Hanuman Parshad, Girraj Parshad, Mathura Parshad and Dwarka Parshad along with certain other co-sharers was 753 kanals and 5 marlas. It has been projected before this Court that at the first instance, the land measuring 536 kanals and 14 marlas was partitioned in the year 1973 and an instrument of partition was prepared. Thus, the case of the appellants is that Hanuman Parshad, Girraj Parshad, Mathura Parshad and Dwarka Parshad were allocated the land measuring 58 kanals and 5 marlas, whereas the land measuring 216 kanals and 11 marlas with proportionate share of these four brothers remained.

On the other hand, it is the case of the defendants that in the year 1973, Hanuman Parshad and Girraj Parshad were allocated the land measuring 58 kanals and 5 marlas and therefore, their share in the remaining land will come to 25 kanals and 5 marlas. On the one hand, the respondents are relying upon mutation for final partition in the year 1973, whereas on the other hand, the learned counsel representing the appellants relies upon goshwara.

In this case, the document will be the instrument of partition drawn by the Court of Assistant Collector 1st Grade while partitioning the land measuring 536 kanals and 14 marlas.

Keeping in view the aforesaid facts, the learned counsel representing the parties as well as the learned State counsel, who is present in the Court, are requested

to produce a copy of the instrument of partition on the next date of hearing.

List on 29.02.2024, in the urgent list.

A photocopy of this order be placed on the file of another connected case.”

2.3 Thereafter, the directions was issued to the State of Haryana to produce the copy of the instrument of partition in order to clarify the possession. In deference to the aforesaid directions, the instrument of partition has been produced. From the instrument of partition, it becomes evident that all the four brothers were allotted the equal share in the land measuring 86 kanal. Thus, two brothers namely Sh. Hanuman Parshad and Sh. Girraj Parshad got 43 kanal jointly.

2.4 Thus, it is evident that the vendors of the appellant will get equal share with their remaining two brothers in the land measuring 216 kanal and 11 marlas, which is sought to be partitioned. Their share comes to 25 kanal and 5 marlas only and not 43 kanal.

2.5 The learned counsel representing the appellants contends that the share of two brothers in the total land is 83 kanal and they got 43 kanal in the year 1973, hence, they will get remaining 40 kanal.

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

2.7 The argument put forth by the learned counsel representing the appellant has no substance because not only *Halqa Girdawar*, Assistant Collector, Ist Grade as well Additional District Judge have concurrently found that the share of the appellants or their predecessor would only be 25 kanal and 5 marlas. In the previous partition, they were granted share according to their entitlement and there was no deficiency.

2.8 In RSA-3948-2011, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the Courts below while dismissing their suit for grant of permanent injunction. In this suit, the plaintiffs are claiming to be owners in possession of 54 kanal and 16 marlas of land, and as has already been found, they are only entitled to 25 kanal and 5 marlas. Moreover, decree for permanent injunction cannot be passed because the partition proceedings are already pending.

3. Decision:-

3.1 Hence, no ground to interfere in both the appeals is made out.

3.2 Dismissed accordingly.

3.3 The Court Master is requested to return the record to Sh. J.S. Pannu, Assistant Advocate General, Haryana.

3.4 All the pending miscellaneous applications, if any, are also disposed of.

April 16th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No