



RSA-5010-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-5010-2019 (O & M)
Date of decision: 23.09.2024

SURJIT SINGH AND OTHERS

...Appellants

Versus

JOGINDER SINGH AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. P.K.S.Phoolka, Advocate,
for the appellants.

RAJBIR SEHRAWAT, J. (Oral)

1. The present regular second appeal has been filed by the appellant-plaintiffs in the original suit, challenging the concurrent judgments and decrees passed by both the courts below, whereby a suit for declaration and permanent injunction has been dismissed.

2. Brief facts, as can be delineated from the record, are that plaintiffs had filed a suit alleging therein that there was a joint *khata* of land measuring 246 *bigha* 2 *biswa* owned and possessed by Bagh Singh son of Sunder Singh, Ujjagar Singh son of Dhanna Singh and Buta Singh son of Lal Singh. The consolidation proceedings had taken place in the village in the year 1959. In the said consolidation proceedings, land measuring 412 *kanal* 6 *marla* was allotted to the above-said co-sharers, in lieu of their earlier land measuring 246 *bigha* 2 *biswa*, situated at village Chughe Kalan. Since the land had come to their share, therefore, all the

above-said co-sharers had requested the Consolidation Officer that their

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shares in the above-said land be separated. Although the proceedings to this effect were recorded in the consolidation proceedings, and orally, the co-sharers had taken possession of their respective segregated shares, however, in the revenue record, it continued to be a joint *khata*. Accordingly, it was prayed that the decision taken and the settlement arrived at during the consolidation proceedings, be given effect to. Still further, it was prayed that since in the interregnum, some land which had come to the share of the plaintiffs, had been sold by other co-sharers, therefore, the sale deeds be also declared, null and void.

3. On the basis of evidence led by the parties and after appreciating the material on record, the trial Court did not find any merit in the assertions made by the plaintiffs. Accordingly, the suit filed by the plaintiffs was dismissed, vide impugned judgment and decree dated 08.01.2018. Aggrieved against the same, the present appellants moved the lower Appellate Court. However, even the first appeal was dismissed by the lower Appellate Court, vide impugned judgment and decree dated 01.07.2019. Aggrieved against the same, the present appeal has been preferred.

4. While arguing the case, counsel for the appellants has reiterated the above-said assertions of pleadings, as made in the plaint, and has submitted that since the parties had already taken separate possession of their respective shares and the factum of making request to the Consolidation Officer for partitioning the land is duly reflected in the consolidation record, therefore, the courts should have decreed the suit

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filed by the appellants. Both the courts below have gone wrong in law in holding that since there was no order passed by the Consolidation Officer, therefore, the partition could not be given effect to.

5. As an extension of the above said arguments, counsel for the appellants has also submitted that since the sale deeds were executed by other co-sharers qua the properties which had come to the appellants, therefore, the said sale deeds were null and void and, accordingly, the same should have been set aside.

6. No other argument has been raised.

7. Having heard learned counsel for the appellants and having perused the case file, this Court finds that the courts below have not committed any illegality or perversity. Even if there was a prayer made before the Consolidation Officer, the fact remains the same has not been reflected in the revenue records. Otherwise also, job of the Consolidation Officer was to allocate the parcels of the land to those persons, who had made prayer for segregation of their land or for keeping their land in one *khata*. It is not even disputed by counsel for the appellants that in the said proceedings, the Consolidation Officer had allocated the above-mentioned land jointly in the name of the appellants and their other co-sharers. After that had been done, the Consolidation Officer had exhausted his/her authority and he could not have partitioned the land any further. The jointness of *khata* is reflected even in the revenue record for a long time. The appellants had the opportunity to file separate proceedings for partition. However, even that remedy was not availed by the appellants. In



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such a situation, it cannot be said that the sale deeds qua the land, which has been purchased by a third person, would be void, *ab initio*, and, thus, would be liable to be set aside. The above-said vendees have rightly purchased the land, as reflected in the revenue record.

8. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, learned counsel for the appellants has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

9. In view of the above, finding no merit in the present appeal, the same is dismissed.

10. The pending miscellaneous application, if any, is also disposed of as such.

23.09.2024
parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No