

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**115****RSA No.5968 of 2019 (O&M)****Date of Decision : 09.01.2024**

Sandhura Singh

....Appellant

VERSUS

Gurjant Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.S. Jalal, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. This is a plaintiff's second appeal against the concurrent findings recorded by both the Courts below.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration and permanent injunction to the effect that the partition proceedings for which mutation No.1113 was sanctioned on 01.04.1972 qua 444 kanals 4 marlas of land are bad in law as the same was done behind the back of the plaintiff-appellant. The defendant-respondents appeared and filed their written statement taking preliminary objections regarding the suit being time barred as well as that no cause of action has arisen in favour of the plaintiff-appellant. It was further averred that post the partition all co-sharers were in their respective portions of land and land measuring 111 kanals 1 marla had fallen to the share of the plaintiff-appellant and he was put in actual possession and since then he has been in continuous possession of the said land. Replication was filed. On the basis of pleadings of the parties the following issues were framed :

- (1) Whether the plaintiff is entitled for declaration as prayed for? OPP

- (2) Whether plaintiff is entitled for permanent injunction as prayed for? OPP
- (3) Whether the suit is not maintainable in the present form? OPD
- (4) Whether the plaintiff has not come to the court with clean hands and has suppressed material facts from this court? OPD
- (5) Whether the plaintiff has no *locus standi* or cause of action? OPD
- (6) Whether the suit is time barred? OPD
- (7) Whether the suit is barred under 0.2 Rule 2 CPC? OPD
- (8) Relief.

3. On the basis of pleadings of the parties and the evidence led, the Trial Court dismissed the suit vide judgment and decree dated 14.12.2017. Aggrieved by the said judgment and decree an appeal was preferred which was also came to be dismissed vide judgment and decree dated 01.07.2019. Hence, the present Regular Second Appeal.

4. Learned counsel for the plaintiff-appellant would contend that the partition is not reflected in the revenue record and that the said partition was done behind the back of the plaintiff-appellant and in connivance with the revenue authorities. As per the learned counsel, though both the Courts below have concurrently found that the partition was conducted during the time of the predecessor-in-interest of the parties and that the plaintiff-appellant had admitted in his cross-examination that the thumb impressions of the parties are there on the *Rapat*, the said finding are illegal and erroneous.

5. Heard.

6. In the present case, for the last 45 years, no one challenged the partition proceedings. Even the plaintiff-appellant himself has not moved any application to the revenue authorities qua the partition proceedings or the mutation. Even before this Court learned counsel for the plaintiff-appellant has been unable to make any meaningful argument that the partition proceedings are not in accordance with law. The partition proceedings took place about 45 years ago and the same have not been challenged by any of the co-sharers including the predecessor-in-interest of the plaintiff-appellant. Admittedly, the thumb impressions of the predecessor-in-interest and of the other parties are there on the *Rapat* regarding the partition. Apart from bald assertions there is nothing to disprove the factum of the partition having been affected. Hence, in the absence of any evidence that the partition proceedings were conducted behind the back of the plaintiff-appellant and that the same was the result of fraud, I do not find any ground to interfere in the present appeal.

7. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

09.01.2024
jk

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