

RSA No.2763 of 2018

1

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

111

RSA No.2763 of 2018 (O&M)**Reserved on : 20.02.2024****Date of Decision : 11.03.2024**

Dharam Singh

....Appellant

VERSUS

Raj Bala & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sachin Mittal, Advocate and
Mr. Parth Sharma, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant No.16-appellant against the judgment and decree dated 28.02.2014 passed by the Trial Court and the judgment and decree dated 06.12.2017 passed by the First Appellate Court whereby the suit of the plaintiff-respondents for separate possession by partition and the counter-claim of defendant No.2 have been decreed.

2. The brief facts relevant to the present case are that as per the plaintiff-respondents the total land measures 53 Kanal 13 Marla situated in Mauza Naharpur Kasan, Tehsil Gurgaon, District Gurgaon and plaintiff Nos.1 to 3-respondents were joint owners in possession of the suit land having 1/7 share each. It was alleged that plaintiff No.1-respondent sold her share to defendant No.1 and plaintiff Nos.2 and 3-respondents sold their 2/7

share to plaintiff No.4-respondent who was already owner in possession of 37/3219 share in the suit land and thus now plaintiff No.4-respondent had 6697/22533 share in the suit land. It was further alleged that except for the land falling in Rectangle No.30 Killa No.10/1/1 measuring 3 Kanals, the rest of the land had been acquired under the Land Acquisition Act, 1894 and that some of the defendants and plaintiffs had constructed their residential houses on the joint land. The plaintiff-respondents requested the defendants to get the suit land partitioned by metes and bounds but they refused to do so, hence the suit. The defendant No.16-appellant did not file a separate written statement but adopted the written statement of defendant No.2. Defendant No.2 in his written statement submitted that the whole suit land measuring 53 Kanal 13 Marla was put in a hotchpotch after a colony was laid out by defendant No.1 and no part of Khasra No.30/10/1/1 was lying vacant and unoccupied even prior to filing of present suit which could be sold and therefore the purchases by plaintiff No.4-respondent from plaintiff Nos.2 and 3-respondents are illusionary and fictitious. The question of title is involved in the suit. It was stated that entire land, except Khasra No.30/10/1/1 (3-0), had been acquired by the Haryana Government much prior to the institution of the suit and the co-owners thereof had also received compensation and since the land of Khasra No.30/10/1/1 was fully constructed one the same was indivisible even on the day of institution of the suit. The plaintiff-respondents filed replication to the written statement of defendant No.2 wherein contents of the plaint were reiterated and those of the written statement were controverted. The defendant No.2 also filed a counter claim.

3. The Trial Court framed the following issues :

- 1) Whether the plaintiffs are in joint possession of the suit property to the extent of 1/7th share each as co-owner as alleged ? OPP
- 2) If issue No.1 is proved, whether the plaintiffs are entitled to get the suit property partitioned by metes and bounds as prayed for ? OPP
- 2A) Whether the plaintiff No.4 is joint owner to the extent of 6697/22533 share in the land in suit ? If so, to what effect ? OPP4
- 3) Whether the defendant No.2 is entitled to a decree for permanent injunction as prayed for and the counter claim of the defendant No.2 deserves to be allowed ?
OPD No.2
- 4) Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
- 5) Whether the suit is barred under Order 2 Rule 2 CPC ? OPD
- 6) Whether the suit is bad for mis-joinder and non-joinder of necessary parties ? OPD
- 7) Whether the plaintiffs are estopped by their own acts and conduct to file the present suit ? OPD
- 8) Whether the plaintiffs have suppressed the true and material facts and not come to the court with clean hands ? OPD

9) Whether the plaintiffs have no cause of action to file the present suit ? OPD

10) Whether the suit is barred by limitation? OPD

11) Relief.

4. The Trial Court vide judgment and decree dated 28.02.2014 decreed the suit of the plaintiff-respondents and the counter-claim of defendant No.2. A preliminary decree for partition of the suit property was passed declaring the share of plaintiff No.4-respondent to the extent of 17 Marla 6.8 Sarsai, the share of defendant No.16-appellant to the extent of 1 Marla 4.9 Sarsai and the share of defendant No.2 to the extent of 13 Marla in the suit property bearing Rectangle No.30 Killa No.10/1/1 measuring 3 Kanal. The plaintiff-respondents were restrained from interfering in the exclusive possession of the residential house of defendant No.2 till final partition of the suit land. Aggrieved by the said judgment and decree dated 28.02.2014 an appeal was preferred by the defendant No.16-appellant which appeal was dismissed vide judgment and decree dated 06.12.2017. Hence, the present regular second appeal.

5. Learned counsel for the defendant No.16-appellant contended that the judgements and decrees of the Courts below are illegal and erroneous and that the suit as well as the counter-claim deserved to be rejected. It is submitted that suit property already stood partitioned by metes and bounds and the co-sharers were in their respective possessions and therefore there was no occasion to decree the suit and the counter-claim.

6. Heard counsel for the defendant No.16-appellant and perused the paperbook.

RSA No.2763 of 2018

5

7. A perusal of the impugned judgements and decrees shows that though it was argued on behalf of the defendant No.16-appellant that the suit land already stood partitioned, however there is nothing on the record to even remotely suggest the date on which the partition had taken place and amongst whom. The revenue record is also silent regarding any earlier partition. Rather, the Trial Court has recorded in para 17 that “*Whereas learned counsel for the defendant No.16 argued that the defendant No.16 is having share in the suit land vide sale deed bearing vasika no.9270 dated 28.7.2004 Ex.DW16/3 (DW2/3). He submitted that he has no objection if the partition is made*”. Even before this Court the counsel for the defendant No.16-appellant is unable to point to any evidence from which it can be deduced that the suit land already stood partitioned. No other point was argued.

8. 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.

11.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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