

RSA-4273-2018 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

103

RSA-4273-2018 (O&M)
Date of decision:06.03.2024

Gurdip Singh and another

...Appellants.

Versus

Sher Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. B.S. Jaswal, Advocate
for the appellants.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellants/ defendants against the concurrent findings recorded by both the Courts below, vide which the suit of the plaintiffs for separate possession by way of partition was decreed, whereas relief with regard to decree of permanent injunction was declined.

2. The plaintiffs filed a suit for possession by way of partition by meets and bounds of an area measuring 51 Marlas as detailed in the head note of the plaint and for permanent injunction for restraining the defendants from selling or alienating the suit land in any manner.

3. Brief facts of the case as per plaint are that the plaintiffs Sohan Singh, Mohan Singh and Mohinder Singh were the original owners of the suit land, who have since died. They had sold their shares in the suit land as shown in the jamabandies for the years 1967-68, 1972-73, 1977-78, 1987-

RSA-4273-2018 (O&M)

- 2-

88, 1992-93 and 1997-98. The plaintiffs had purchased 8 Marlas of land from Sohan Singh vide sale deed dated 26.07.2000 and their names have been incorporated in the jamabandi for the year 1997-98. It was alleged that always there remained dispute over the partition of the property. Whenever, the plaintiffs tried to raise constructions over the 8 Marlas of property, then one or the other defendants raised objections. So, the plaintiffs requested the defendants to separate their shares from the total property and to deliver the possession of the same to them. But defendants refused to do so. Defendants No.34 to 39 are successors of Mohan Singh and Mohinder Singh. Mohan Singh and Mohinder Singh had sold their entire shares during their life time and there remained nothing to be inherited by the defendants No.34 to 39, so these defendants were impleaded as proforma defendants and no relief was claimed against them. It was also alleged that the suit property is still joint and has not been partitioned and all the co-sharers are owners in joint possession over the suit property. Previously, suit for partition of the total land was filed against defendants No.1 to 15 and 34 to 39 only regarding the Khasra no.458/1, 458/2, 458/3, 458/4 and 458/5 but inadvertently Khasra No.457 could not be joined in that suit and that suit for partial partition had to be withdrawn. As the defendants refused to admit the claim of the plaintiffs, hence the present suit was filed.

4. The suit of the plaintiffs for separate possession by way of partition was decreed, whereas relief with regard to decree of permanent injunction was declined by the trial Court, vide judgment and decree dated 20.10.2015. The appeal preferred by the appellants/ defendants before the

RSA-4273-2018 (O&M)

- 3-

First Appellate Court was dismissed, vide judgment and decree dated 04.12.2017. Hence, the present Regular Second Appeal has been filed by the appellants/ defendants.

5. Learned counsel for the appellants/ defendants has contended that both the Courts below have erred in holding that the present suit is not barred under Order 2 Rule 2 CPC. Once it is established that their earlier suit was dismissed, which related to the same subject matter, so the subsequent suit of the same nature and same cause of action does not lie and is barred under the law. He has also contended that the plaintiffs are seeking the partial partition which is not permissible under law and they have not joined other khasra numbers such as Khasra No.37/5 and 37/7 out of which some portion is of gair mumkin nature and is part of the khata of which Khasra No.458 is a part. So, the plaintiffs have not come to the Court with clean hands and have concealed material facts from the Court with regard to other gair mumkin property.

6. I have heard learned counsel for the appellants and gone through the record thoroughly.

7. The facts regarding dismissal of the earlier suit for partition that had been filed by the contesting respondents is not disputed. The judgment and decree in the said earlier suit has been proved on record as Ex.P3. The perusal of the same reveals that the earlier suit was filed by the co-sharers for partition of the land comprised in Khasra No.457 only, but the present suit for partition has been filed with regard to land comprised in Khasra No.457 and 458. The said suit was dismissed not only on account of partial partition, but as the plaintiffs in that suit failed to prove their ownership to

RSA-4273-2018 (O&M)

- 4-

the extent of their share in the suit property, as alleged by them.

8. In the instant suit, the contesting respondents have sought the partition of property comprised in Khasra no.458/1, 458/2, 458/3, 458/4 and 458/5, meaning thereby that the subject matter in the earlier and the present suit is not the same. So the present suit is not hit by the principle of resjudicata and is not barred under Order 2 Rule 2 CPC. From the jamabandi for the year 2012-13 Ex.P6, it is proved that the respondents are joint share holders in Khasra no.458/1, 458/2, 458/3, 458/4 and 458/5 and as such, they are entitled to seek the relief of partition qua the said property.

9. Nothing has been brought on record by the defendants to prove that it is a partial partition and the other relevant khasra numbers where they are having the joint ownership have not been joined, so the present suit cannot be held to be bad for partial partition.

10. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

11. Appeal stands dismissed being bereft of any merits.

12. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

06.03.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No