

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

129

RSA No.100 of 2024 (O&M)**Reserved on: 11.01.2024****Date of Decision: 16.01.2024**

Pala Ram

....Appellant

VERSUS

Balwant Singh (since deceased) through LRs and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjiv Ghai, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 22.02.2017 and 16.11.2023 passed by the Trial Court and the First Appellate Court respectively.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction for restraining the defendant-respondent Nos.2 and 3 from carving out any land to be given to defendant-respondent No.1 in partition out of the suit land in Khasra Nos.168 and 169. In the plaint it was averred that the plaintiff-appellant along with his mother Smt. Sukhdevi and brothers, namely, Suresh Kumar and Ramesh Kumar were absolute owners in possession of the land. It was further averred that the land measuring 15 *kanals* 11 *marlas*, as described in para 1 of the plaint, was taken in exchange by the father of the plaintiff, namely, Ajmer Singh from defendant-respondent No.1 - Balwant Singh - and in lieu of the said

exchange, land measuring 19 *kanals* 14 *marlas* situated at village Panwa, Tehsil Thanesar, District Kurukshetra was given to defendant-respondent No.1. In this regard a judgment and decree dated 27.04.1994 was also passed by the Sub Judge, Kurukshetra. It was further averred that the partition proceedings had been initiated against the plaintiff-appellant and other co-owners qua the partition of total land measuring 58 *kanals* 4 *marlas* as described in para 5 of the plaint. It was further the averment that the defendant-respondent No.1 in collusion with the revenue officials i.e. defendant-respondent Nos.2 and 3 was bent upon getting the land of his share out of the suit land which was given in exchange by defendant-respondent No.1 to the plaintiff-appellant and his family and in which they were in actual physical possession. The Trial Court held the suit to be not maintainable. Aggrieved by the judgment and decree dated 22.02.2017 an appeal was preferred, which was also dismissed by the First Appellate Court vide judgment and decree dated 16.11.2023. Hence, the present Regular Second Appeal.

3. Learned counsel for the plaintiff-appellant has vehemently contended that the defendant-respondent No.1 had exchanged his land with the father of the plaintiff-appellant and that the plaintiff-appellant and his family were in possession of the suit land after the exchange and in this regard a judgment and decree was passed on 27.04.1994 and hence the suit ought to have been decreed. Learned counsel for the plaintiff-appellant has further argued that the Trial Court while dismissing the suit on the ground of maintainability has also recorded the findings on merits, which is contrary to settled law.

4. I have heard learned counsel for the parties.

5. In the present case admittedly the partition proceedings are pending before the Court of Assistant Collector IInd Grade and both the Courts below have concurrently found that all the pleas taken herein could have well been taken before the concerned Revenue Court. Section 158 of the Punjab Land Revenue Act, 1887 (as applicable to the State of Haryana) also bars the jurisdiction of the Civil Court. Though learned counsel for the plaintiff-appellant has argued that since there was a judgment and decree in favour of the father of the plaintiff-appellant qua the exchange of the land hence the suit ought to have been decreed, this cannot be accepted inasmuch as it would always be open to the plaintiff-appellant to raise all the pleas taken herein before the concerned Revenue Court where admittedly proceedings are pending. The argument raised by learned counsel for the plaintiff-appellant that while dismissing the case on maintainability observations have also been made on merits and that the observations would come in his way before the Revenue Court, merits consideration in view of the fact that the present suit is not maintainable being specifically barred under Section 158 of the Punjab Land Revenue Act, 1887 (as applicable to the State of Haryana) as also the fact that it would always be open to the plaintiff-appellant to raise all the pleas taken herein before the concerned Revenue Court.

6. In view of the above discussion, the present appeal is disposed off while upholding the findings given by the Trial Court and the First Appellate Court. However, it is made clear that any findings recorded by

both the Courts below, on merits, would not be binding on the parties since the suit was held to be not maintainable.

7. The appeal is accordingly disposed off. Pending applications, if any, also stand disposed off.

16.01.2024
jk

(ALKA SARIN)
JUDGE

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