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

RSA-987-2024 (O&M)

Date of Decision : 17.02.2025

Malkit Kaur

... Appellant(s)

Versus

Ajit Singh (deceased) through LRs & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Pal Singh Rehan, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by defendant No.1-appellant challenging the concurrent findings returned by the Trial Court vide judgment and decree dated 29.09.2017 and the First Appellate Court vide judgment and decree dated 20.12.2023.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 herein filed a suit for separate possession of 1/3rd share by way of partition by metes and bounds of land measuring 2 kanals comprised in Khasra No.48/1 marked as ABCD in the site plan as per the jamabandi for the year 2010-2011 situated in the revenue estate of village Dhariwal, Hadbast No.350, Tehsil and District Gurdaspur. It was averred in the plaint that the land measuring 2 kanals was originally owned by Sadhu Singh son of Harnam Singh and Dalip Singh son of Harnam Singh to the extent of 1/6th share each; Partap Singh son of Jhanda Singh and Daljit Singh son of Jhanda Singh to the extent of 1/3rd share each. Sadhu Singh died and after his death his estate devolved upon his sons Joginder Singh, Gurwinder

Singh and Lakhwinder Singh to the extent of 1/18th share each. Similarly, Partap Singh son of Jhanda Singh also died and his estate devolved upon his sons Sohan Singh and Surjit Singh to the extent of 1/6th share each. Likewise, Daljit Singh son of Jhanda Singh also died and his estate devolved upon his sons Balwant Singh and Harbans Singh to the extent of 1/6th share each. It was the case set up by the plaintiff-respondent Nos.1 and 2 that thereafter Joginder Singh, Gurwinder Singh and Lakhwinder Singh sons of Sadhu Singh sold their 1/6th share out of the suit land in favour of the plaintiff-respondent No.1 vide a sale deed dated 12.12.2012 and Harbans Singh son of Daljit Singh son of Jhanda Singh sold his 1/6th share in favour of the plaintiff-respondent No.2 - Jaswinder Kaur - vide a sale deed dated 12.12.2012 and thus by virtue of above said sale deeds the plaintiff-respondent Nos.1 and 2 had become owners in possession to the extent of 1/3rd share in the suit land. It was further the case that Sohan Singh and Surjit Singh sons of Partap Singh had also executed a sale deed qua their 1/3rd share in favour of defendant No.2 - Ranjit Kaur (respondent No.3 herein) - vide a sale deed dated 12.12.2012 and as such she had also become co-sharer in the suit property to the extent of 1/3rd share. Likewise, Dalip Singh son of Harnam Singh sold 1/6th share to defendant No.1-appellant vide a sale deed dated 09.06.2011 and Balwant Singh son of Daljit Singh also sold 1/6th share in favour of defendant No.1-appellant vide a sale deed dated 03.12.2012 and thus defendant No.1-appellant also became co-sharer to the extent of 1/3rd share in the suit land. Mutations were also sanctioned. It was further the case in the plaint that the property was *gair mumkin* property and

most of it was under construction and only one vacant plot shown by letters JKLM in the site plan was in actual physical possession which was situated between the houses of defendant Nos.1 and 2 from which they were not deriving any benefit. Hence the partition was sought.

3. Defendant No.1-appellant contested the suit whereas defense of defendant No.2 (respondent No.3 herein) was struck off.

4. The suit was contested by defendant No.1-appellant raising preliminary objections regarding maintainability, cause of action, etc. On merits it was admitted that the property was previously owned as stated in the plaint. However, defendant No.1-appellant denied any sale deed in favour of the plaintiff-respondent Nos.1 and 2 and stated that there was no such sale-deed and it was not binding upon the right of defendant No.1-appellant. It was the case set up by defendant No.1-appellant that Sadhu Singh and Dalip Singh sons of Harnam Singh had sold their share out of the suit land measuring 14 marlas in favour of her husband in the year 1985 and in token of the transaction, one writing was also executed. Thereafter, in the year 1996, the husband of defendant No.1-appellant constructed a residential house on the land purchased from Sadhu Singh and Dalip Singh. Later on a sale deed was executed on 09.06.2011 in favour of defendant No.1-appellant qua 6½ Marlas of the land out of the suit land comprised in Khasra No.48/1. It was further the case that Jarnail Singh and defendant No.1-appellant requested the wife of late Sadhu Singh to execute the sale deed in their favour of the land measuring 6½ marlas out of 2 kanals qua which money had already been received from them. However, they put off the matter on

one pretext or the other. It was further the case that Joginder Singh, Gurwinder Singh and Lakhwinder Singh, taking advantage of the entries in the revenue records, executed the alleged sale deeds without consideration in favour of the plaintiff-respondent Nos.1 and 2.

5. Replication was filed. On the basis of the pleadings of the parties, the following issues were framed:

- 1) Whether plaintiffs are entitled for possession as prayed for ? OPP
- 2) Whether suit of the plaintiff is not maintainable in the present form ? OPD
- 3) Whether plaintiffs have no cause of action or any locus standi to file the present suit ? OPD
- 4) Whether plaintiffs have not come to the court with clean hands ? OPD
- 5) Relief.

6. The Trial Court vide judgment and decree dated 29.09.2017 passed a preliminary decree holding the plaintiff-respondent Nos.1 and 2 alongwith the defendant-appellant were entitled to 1/3rd share each of the suit land. Aggrieved by the same, an appeal was preferred by defendant No.1-appellant before the First Appellate Court which appeal was dismissed vide judgment and decree dated 20.12.2023. Hence, the present regular second appeal by defendant No.1-appellant.

7. Learned counsel for the defendant No.1-appellant would contend that both the Courts have erred in decreeing the suit. It is urged that the defendant No.1-appellant had purchased the suit property and that a

house had also been constructed upon the same and hence there was no question of any partition. It is further the contention that a writing had been executed qua 14 marlas of land however, despite the entire amount being paid, a sale deed qua 6½ marlas was executed.

8. I have heard the learned counsel for the defendant No.1-appellant.

9. In the present case, both the Courts concurrently found that the plaintiff-respondent Nos.1 and 2 had proved on record through cogent evidence that they were co-owners to the extent of 1/3rd share in the suit property which they had purchased vide different sale deeds from the previous owners. The property being owned previously by Sadhu Singh and Dalip Singh and further having devolved upon the heirs was not a fact which was disputed. The parties had been reflected as co-sharers in the suit land which was *gair mumkin* land. The case of defendant No.1-appellant that her husband had earlier purchased 1/6th share from Sadhu Singh and Dalip Singh in the year 1985 by virtue of a writing was not proved on the record inasmuch as no such writing was placed on the record. The sale deed admittedly in favour of defendant No.1-appellant is only qua 6½ marlas though the house had been constructed upon 14 marlas of land. The argument of the learned counsel for the defendant No.1-appellant that 14 marlas of land was purchased on the basis of a writing from the previous owners cannot be accepted in the absence of any sale deed having been executed qua the entire 14 marlas. Both the Courts have concurrently found that the parties are co-sharers and there is nothing on the record to the

contrary. Further still, though defendant No.1-appellant had stated that the sale deeds were wrongly executed in favour of the plaintiff-respondent Nos.1 and 2, however, there has been no challenge which has been laid to the said sale deeds.

10. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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