

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****101+207****RSA-1351-1995 (O&M)****Date of Decision : 06.02.2025**

Preeta (deceased) through LRs and Others

....Appellants

VERSUS

Ramdia (deceased) through LRs and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sudhir Aggarwal, Advocate for the appellants.

Mr. Vikram Singh, Advocate and

Mr. Abhinav Sood, Advocate for respondent Nos.1(i) to 1(iii).

ALKA SARIN, J. (Oral)**CM-10985-C-2024**

1. This is an application for bringing on record the legal representatives of respondent No.1(iv) – Goverdhan Singh – who is stated to have died.

2. For the reasons stated in the application, the same is allowed. The legal representatives of respondent No.1(iv) as mentioned in para 2 of the application are impleaded as party. Amended memo of parties is taken on record.

RSA-1351-1995 (O&M)

3. Present appeal has been preferred by defendant Nos.1, 4 and 6 (defendant-appellants) challenging the judgment and decree dated 05.04.1995 passed by the First Appellate Court vide which the judgment and decree dated 02.11.1992 passed by the Trial Court was reversed.

4. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 - Ram Dia (since deceased) - filed a suit for simpliciter permanent injunction averring therein that he was owner in possession of the agricultural land measuring 10 Kanals situated in Khasra No.169/2, Khewat No.757, Killa Nos.465/8 (475 Kanals 08 Marlas). The specific case of the plaintiff-respondent No.1 in para 2 of the plaint was that he was a co-sharer in the said land and that the defendants were interfering in his possession and were openly threatening that they would dispossess him. Written statement was filed by the defendant-appellants. It was the stand taken that the *abadi deh* land in Khatauni Nos.465/8 and 475/8 were wrongly given and there was no such Khatauni of *abadi deh* land. Khasra No.169/2 measuring 475 Kanals 08 Marlas of land had been partitioned by way of Civil Suit No.236/1 of 30.10.1975 titled 'Chatter Singh and Another vs. Hari Ram and Others' decided on 27.01.1982. Final decree was passed on 01.03.1983. It was further the stand taken that the entries in the Khasra Girdawari qua 10 Kanals of land had wrongly been incorporated without any notice to the defendants and that no such entry was there in the Jamabandi for the year 1984-85. Further, the defendant-appellants raised the plea that the total area of Khasra No.169/2 was 475 Kanals 08 Marlas and it had not been mentioned in the plaint that as to which part of the land was in possession of the plaintiff-respondent No.1. Replication was filed by the plaintiff-respondent No.1 wherein it was reiterated that plaintiff-respondent No.1 was owner in possession of the suit land, however, it was not specifically denied that the property had been partitioned.

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

1. Whether the plaintiff is owner in possession of the disputed land as alleged, if so to what effect ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has not come with clean hands in the Court ? OPD
4. Whether the defendants are entitled to special costs u/s 35-A CPC ?
5. Relief.

6. The Trial Court dismissed the suit filed by plaintiff-respondent No.1 vide judgment and decree dated 02.11.1992 relying on the testimony of DW-1 Ramphal, Patwari concerned of the revenue estate that the entries were changed in collusion with plaintiff-respondent No.1 and that no notice was given regarding the change in the Khasra Girdawaris to the shareholders. It was further noticed by the Trial Court that notice was issued to Ram Diya, Sarpanch of village Chirana and since the Gram Panchayat was not the owner, as the land had already been partitioned, the concerned persons were not given any notice. The Trial Court further came to the conclusion that the Jamabandis (Ex.D1 and Ex.D2) reveal that the disputed property was *abadi deh* in the shape of *gair mumkin abadi* and in the year 1982 *abadi deh* stood partitioned vide judgment and decree (Ex.D13 and Ex.D14). It was further observed that the plaintiff-respondent No.1 was not

able to identify the 10 Kanals of land he was owner in possession of. Aggrieved by the same, an appeal was preferred by the plaintiff-respondent No.1 which appeal was allowed by the First Appellate Court vide judgment and decree dated 05.04.1995. Hence, the present regular second appeal.

7. Learned counsel for the defendant-appellants would contend that the First Appellate Court erred in decreeing the suit of the plaintiff-respondent No.1. It is urged that Khasra No.169/2 stood partitioned vide judgment and decree (Ex.D13 and Ex.D14), which fact was not denied by the plaintiff-respondent No.1 in the replication. It is further the contention that no evidence was led qua identity of the land measuring 10 Kanals alleged to be in possession of plaintiff-respondent No.1. Learned counsel for the defendant-appellants would further contend that the entire onus was shifted by the First Appellate Court upon the defendants though clearly plaintiff-respondent No.1 had failed to prove the identity of the land.

8. *Per contra* learned counsel for the plaintiff-respondent No.1 would contend that plaintiff-respondent No.1 was not a party to the partition proceedings and that 10 Kanals of land was separated from 475 Kanals 08 Marlas of land which was partitioned vide judgment and decree (Ex.D13 and Ex.D14). It is further the contention that in the Khasra Girdawaris from 1982 to 1991 the entries were in favour of the plaintiff-respondent No.1, which have not been challenged upto date.

9. I have heard learned counsel for the parties.

10. In the present case the plaintiff-respondent No.1 had approached the Court seeking permanent injunction against the defendant-

appellants on the ground that he was a co-sharer and was in exclusive possession of 10 Kanals of land in Khasra No.169/2. A perusal of entire record reveals that there is no demarcation report on the record nor any site plan to identify the 10 Kanals of land alleged to be in possession of the plaintiff-respondent No.1. Though much mileage has been sought to be drawn from the entries in the Khasra Girdawari from 1982 to 1991 reflecting that the plaintiff-respondent No.1 was in cultivating possession of 10 Kanals of land, however, on a query by the Court, learned counsel for the plaintiff-respondent No.1 has candidly admitted that there is no evidence identifying the said 10 Kanals of land. A perusal of the plaint, written statement and replication reveals that a specific stand was taken by the plaintiff-respondent No.1 that he was a co-sharer in the suit property. The defendant-appellants in their written statement took a specific plea regarding the entire land having been partitioned. In the replication there is no specific denial to the partition having taken place. It is trite that in the absence of any specific denial to the pleadings they are deemed to be admitted. The Trial Court had on the basis of the record found that the entries in the Khasra Girdawaris were made in 1982 behind the back of the defendant-appellants. The judgment and decree dated 27.01.1982 (Ex.D13 and Ex.D14) was qua the partition of Khasra No.169/2. The entries in the Khasra Girdawaris were made in 1982 without notice to any of the parties. DW1 Ramphal, Patwari concerned had stepped into the witness-box and had admitted that the notice was not sent. It was further observed by the Trial Court that one notice had been sent to Ram Diya, Sarpanch of village Chirana, however, since the land already stood

partitioned, the land was not owned by the Gram Panchayat and that no notice was sent to the persons to whom the plots were allotted during partition. In the absence of any evidence showing the area of 10 Kanals having been segregated while partitioning the land vide judgment and decree (Ex.D13 and Ex.D14) and in the absence of any identification of the land measuring 10 Kanals alleged to be in possession of the plaintiff-respondent No.1, the judgment and decree dated 05.04.1995 passed by the First Appellate Court cannot be sustained.

12. In view of the judgment of the Hon'ble Supreme Court in the case of **Pankajakshi (Dead) through LRs & Ors. vs. Chandrika & Ors. [AIR 2016 SC (Civil) 1091]** there would be no requirement to frame substantial questions of law.

11. As a result, the present regular second appeal is allowed. The judgment and decree dated 05.04.1995 passed by the First Appellate Court is set aside and that of the Trial Court dated 02.11.1992 is restored. The suit of the plaintiff-respondent No.1 is dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

06.02.2025
jk

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