IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4831-2011 (O&M)
Date of Decision: 16.01.2025

GURJANT SINGH AND OTHERS

. . . .APPELLANTS

Vs.

KARNAIL SINGH

. . . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Himani, Advocate, for
Mr. Vikas Singh, Advocate, for the appellants.

Mr.R.S. Rangpuri, Advocate, for the respondent.

DEEPAK GUPTA, J.

By way of present Regular Second Appeal, defendants of the case have assailed the concurrent findings of the Courts below, inasmuch as suit for possession by way of partition filed by the plaintiff-Karnail Singh *(respondent herein)* was decreed by the trial Court on 25.02.2011; and appeal against the same filed by the defendants *(appellants herein)* was dismissed by the First Appellate Court on 07.06.2011.

2. Learned counsel for the parties have been heard.

3. Concededly, suit property was earlier jointly owned by plaintiff-Karnail Singh, defendant No.1-Gurjant Singh and their brother Gurtej Singh, as they had purchased it by way of registered sale deed dated 29.04.1981. Gurtej Singh had later on sold his share to the plaintiff and defendant No.1 by way of sale deed dated 03.02.2005 and this way, plaintiff and defendant No.1 became owner of the suit property to the extent of 1/2 share each.

4. Plaintiff prayed for partition of the suit property by metes and bounds. The stand taken by defendant No.1 along with his sons i.e. defendant Nos.2 & 3 is that suit property had already been partitioned. Defendants relied

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upon writing dated 31.01.2005 and 16.03.2005 to support the case of private partition.

5. However, the trial Court disbelieved the defence set up by the defendants and found the suit property to be joint in nature. It will be relevant to reproduce the findings recording by the trial Court, which read as under: -

> "It is admitted fact that previously suit property was owned by plaintiff defendant no. 1 and their brother Gurtej Singh in equal share be. 1/3 share each as they purchased it vide registered sale deed hearing wasika No. 149 dated 29/4/1981 and later on Gurtej Singh sold his 1/3 share out of the suit property, plaintiff and defendant no.1 vide registered sale deed bearing wasika No.1135 of 3/2/2005 and both the plaintiff and defendant no.1 became co-sharers in possession of the suit property to the extent of ½ share each. The defendant no.1 has alleged that the suit property has already been partitioned between him and the plaintiff alongwith other joint property by way of family partition since long and writings in this regard were also executed with the help of Panchayat on 31/1/2005 and 16/3/2005 but he has not got proved any such writing on the file as he has produced photocopy of an application regarding compromise submitted before SHO, Police Station mark-B and affidavit dated 16/3/2005 sworn by him mark-C. The perusal of above said application mark-B and affidavit mark-C does not show that the suit property or shops constructed upon the suit property have been partitioned between plaintiff and defendant no.1 Copy of jamabandi 2003-04 Ex.P1 shows plaintiff and defendant no.1 as joint owners in possession of land measuring 01 kanals gair mumkin abadi comprised in Khasra No.80//14/1 situated in the area of Jhunir. If the suit property had really been partitioned between the plaintiff and defendant no. I by way of family partition then it should have been reflected in the revenue record also. The mere possessing of different shops by the plaintiff and defendant no. 1 after constructing the same on the suit property admitted by the plaintiff and defendant itself is not sufficient to hold that the suit property has already been partitioned between them by metes and bounds as it amounts to an arrangement for running separate business in separate shops constructed upon the suit property. Therefore, the plaintiff being a co sharer to the extent of ½ share in the suit property is entitled to get

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his share separated by way of partition by metes and bounds. Accordingly, this issue is decided in favour of the plaintiff and against the defendants."

6. The aforesaid findings have been affirmed by the First Appellate Court.

7. The only point raised by learned counsel for the appellants is that defendant had admitted the private partition. Ld. First Appellate Court has rightly observed that stray admission made by the plaintiff-Karnail Singh is insufficient to disbelieve the documentary evidence produced on record and could not take the place of documentary evidence. It is evident from the findings of the Courts below that Mark 'B' relied by the defendants was simply an application moved before the SHO, Police Station; whereas Mark 'C' was an affidavit sworn by him, but none of these documents helped the case of the defendants to prove the partition of the property in dispute. The private partition, as alleged by the defendants, was not even reflected in the revenue record.

8. In the aforesaid facts and circumstances, the courts below did not commit any error in coming to the conclusion that suit property was still joint and had not been partitioned by metes and bounds.

9. Consequently, this Court does not find any ground to interfere in the concurrent findings of facts as recorded by both the Courts below. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

16.01.2025 **(DEEPAK GUPTA)**
Vivek **JUDGE**

Whether speaking/reasoned? *Yes*
Whether reportable? *No*

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