

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

Reserved on: 29.08.2025
Pronounced on: 15.09.2025

RSA-5524-2014(O&M)**Pardeep Kumar & Another****...Appellant(s)****Vs.****Smt. Santosh Aggarwal & Others****...Respondent(s)***********RSA-3206-2015(O&M)****Anil Aggarwal****...Appellant(s)****Vs.****Smt. Santosh Aggarwal & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Argued by:- Mr. Vikram Singh, Advocate with
Mr. Ishnoor Singh, Advocate
for the appellants (in RSA-5524-2014).

Mr. Rajiv Kataria, Advocate
for the appellant (in RSA-3206-2015).

Mr. Raj Kumar Gupta, Advocate
for respondents No.1 to 4.

*********NIDHI GUPTA, J.****CM-10554-C-2025 IN RSA-5524-2014**

Present application under Section 151 CPC is filed for permission to place on record the Synopsis, List of Dates and Sequence of events along with the translated copies of the relevant Lower Court Record.



After going through the contents of the application, which is supported by affidavit of Vineet Aggarwal s/o Brijeshwar Aggarwal, the same is allowed subject to all just exceptions and aforesaid documents are taken on record.

RSA-5524-2014

Present Second Appeal has been filed by the defendants No.1 and 2 against the judgment of reversal dated 19.09.2014 passed by learned Additional District Judge, Jind, in Civil Appeal No.130 of 2010, whereby appeal filed by the plaintiffs/respondents No.1 to 3 herein, was allowed; and the judgment and decree dated 10.09.2010 passed by learned Additional Civil Judge (Senior Division), Safidon (Jind), dismissing the suit of the plaintiffs, was set aside.

RSA-3206-2015

Present Second Appeal has been filed by defendant No.3 against the judgment of reversal dated 19.09.2014 passed by learned Additional District Judge, Jind, in Civil Appeal No.130 of 2010, whereby appeal filed by the plaintiffs/respondents No.1 to 3 herein, was allowed; and the judgment and decree dated 10.09.2010 passed by learned Additional Civil Judge (Senior Division), Safidon (Jind), dismissing the suit of the plaintiffs, was set aside.

Both the above-said Second Appeals are being disposed of by this common order as both appeals are arising out of common impugned



order; and both appeals are between the same parties; and the facts, issues and dispute involved in both the appeals are identical. For the sake of brevity, facts are being taken from RSA-5524-2014 filed by defendants No.1 and 2.

2. Brief facts of the case are that the plaintiffs/respondents No.1 to 3 herein had filed a suit *“seeking a decree of permanent injunction restraining the defendants from digging, laying foundation, raising any kind of construction earth filling etc. and from making any kind of interfere in the peaceful possession of the plaintiffs and Proforma defendant No.4 as owner over the plot measuring about 252 square yards comprised in khasra No.397min (397/2 and 397/5) situated at Railway Road, Safidon and which is bounded as under:-*

East:- 88’ street

West:- 82’ Shop and building of defendants No.1 & 2.

North:- 28’ Railway Road.

South:- 26’ street.

(hereinafter referred to as the suit land.)”

3.1. It was the pleaded case of the plaintiffs that the plaintiffs and pro-forma defendant No.4 (pro-forma respondent No.4 in the present appeal as well), were owners in possession of the suit land by way of private partition i.e. Bahmi Batwara dated 15.01.1989, mutation No.6753 and 6905, partly by way of mutual transfer, Tabadla, also through Bahmi Batwara Yaddast dated 22.8.1997 and through release deed No.3452 dated 28.3.2006, to the extent of their total $\frac{2}{3}$ rd share i.e. 255 square yards in



which 1/3rd share had come to plaintiff No.3 by mutual transfer with his brother Umesh Aggarwal. It was further pleaded that defendant No.3 (appellant in connected RSA-3206-2015) had already sold his 1/3rd share (124 square yards) in the suit land to the defendants No.1 and 2 vide Sale Deed No.569 dated 15.07.1997, pursuant to which no part of the suit land was in ownership of defendant No.3 and therefore, he was not entitled to alienate land out of Khasra No.397. It was pleaded that in the above-said Sale Deeds of 1997, land of plaintiff No.3 has been mentioned on the eastern side of the sold plots, thereby clearly admitting ownership and possession of the plaintiffs over the suit land. Otherwise also, on the basis of 1/3rd share in Khasra No.397min, the defendant No.3 has already sold his entire share 124 square yards to the defendants No.1 & 2 in the year 1997. Now, the defendants want to raise construction upon the suit land without any right and authority and want to interfere into the peaceful possession of the plaintiffs over the suit land want to dispossess the plaintiffs from the suit land illegally and forcibly, for which the defendants have no right. In case, the defendants succeeded in doing so, then the plaintiffs shall suffer an irreparable loss and injury, which cannot be compensated by costs. As such, the plaintiffs instituted the present suit on dated 01.04.2006.

3.2. Upon notice, defendants No.1 and 2 appeared and filed separate written statement pleading that defendants No.1 and 2, being co-sharers in Khewat No.1035, 1036, 1038, situated at village Safidon, are



owners in possession of the suit land and therefore, the suit for permanent injunction against them does not lie. It was further pleaded that defendants No.1 and 2 had purchased the suit land from defendant No.3 vide Sale Deed No.2908 and Sale Deed No.2909 both dated 10.02.2006 for valuable sale consideration; and since date of purchase answering defendants are exclusive owners in possession of suit land measuring 252 square yards. It was further stated that the defendants had constructed boundary wall over the suit land much prior to filing of the suit. Revenue Authorities including Tehsildar and Halqa Patwari and respectables of Safidon had also verified physical possession of defendants No.1 and 2 over the suit land vide Report dated 04.04.2006 made by the Halqa Patwari and Tehsildar, Safidon. The defendants No.1 and 2 are in possession of Khasra No.397/2 and 397/5 being co-sharers measuring 8 marla. The answering defendants are bona fide purchasers of the suit land for consideration from previous owner i.e. the defendant No.3. In this way, the answering defendants are exclusive owners in possession of the suit land and this fact is also in the knowledge of the plaintiffs and proforma defendant No.4. Under the garb of the present suit, the plaintiffs want to harass and cause loss to the defendants without any reason and want to obstruct the defendants No.1 and 2 from raising construction of building over the suit land and the plaintiffs and proforma defendant No.4 are also adamant to dispossess the defendants No.1 and 2 from the suit land.



3.3. It was further averred that no private partition had ever taken place between the co-sharers of Khewat No.1035, 1036 and 1038 as falsely pleaded by the plaintiffs. It was alleged that the partition/Batwara is false and fake and defendant No.3 and co-sharers had never executed the same. The alleged Batwara, Release Deed and Yaddast Batwara are not binding upon the answering defendants. It was admitted that defendant No.3 had sold land measuring 124 square yards out of Khasra No.397 to defendants No.1 and 2 vide Sale Deed No.569 dated 15.07.1997 and Sale Deed No.590 dated 24.07.1997. It was averred that in the previous Sale Deeds of defendants No.1 and 2 in the eastern side is mentioned only for indicating the side; and name of plaintiff No.3 being co-sharer had been shown but this fact did not prove ownership of the plaintiffs. The plaintiffs and pro-forma defendant No.4 had not raised any objection at the time of Sale Deed or even at the time of delivery of possession or at the time of raising of construction. The plaintiffs have no right, title or interest in any part of the suit land. Accordingly, dismissal of the suit was prayed for.

4. Defendant No.3 had filed a separate written statement pleading that according to the revenue record, the defendant No.3 was owner of the suit land and the defendant No.3 had sold the suit land to the defendant No.1 vide registered sale deed No.2909 dated 10.2.2006 and also to defendant No.2 vide registered sale deed No.2908 dated 10.2.2006.



The answering defendant never entered into any Bahmi Batwara as alleged. If any signature had been taken by plaintiff No.3 by misrepresentation, from defendant No.3 in good faith being real brother in that event, that document has no value under the eyes of law as the same has not been entered in any revenue record. The release deed suffered by plaintiff No.3 in favour of plaintiffs No. 1 & 2 are illegal because according to revenue record, defendant No.3 was owner of the suit land. Moreover, Mutations No.9741 and 9742 have been entered and sanctioned in favour of the defendants No.1 & 2 regarding the suit land. The defendant No.3 had rightly executed the sale deeds in favour of the defendants No.1 & 2 and the possession of the suit land is of defendants No.1 & 2. The plaintiffs have no concern whatsoever with the suit land. All other allegations contained in the plaint were denied and dismissal of the suit was prayed for.

5. The defendant No.4 filed separate written statement admitting the claim of the plaintiffs.

6. Replication to the written statement of the defendants No 1 & 2 was filed and it was pleaded in reply to preliminary objections that the suit land/plot of the plaintiffs of 250 square yards is exclusively comprised in khewat No.1036 and khasra No.397 (397/2, 397/5), situated in the revenue estate of Safidon. As per the revenue records for the year 1994-95, the plaintiff No.3, his brother Umesh Aggarwal, and the defendant No.3 were joint owners of a total about 375 square yards of land in khasra



No.397. In the year 1997, defendant No.3 sold his entire $1/3^{\text{rd}}$ share/portion of 124 square yards in the above khasra numbers to the defendants No.1 & 2 vide sale deed No.569 dated 15.7.1997 and sale deed No. 590 dated 24.7.1997 and further the possession of the above portion was also delivered to the defendants No.1 & 2 by defendant No.3. As such, defendant No.3 had no right, title or interest in the remaining plot/suit land of 250 square yards in khasra No.397 (397/2, 397/5), which had come to the exclusive share of plaintiff No.3, partly by virtue of his $1/3^{\text{rd}}$ share in this khasra number and partly through mutual transfer of land dated 12.8.1997 with his brother Umesh Aggarwal, which was further attested by then Executive Magistrate, Safidon. Since then, the plaintiff No.3 has been owner in possession of his above suit land/plot in khasra No.397 to the clear knowledge of all the defendants. Hence, the present suit for permanent injunction against the defendants is fully maintainable.

6.1. It was further pleaded that the alleged sale deeds No.2908 and 2909 dated 10.2.2006, vide which, the defendants No.1 & 2 allegedly purchased the suit land/plot of the plaintiffs from defendant No.3 are false and fictitious and null and void and hence ineffective against the rights and interests of the plaintiffs and the proforma defendant. The alleged vendor/defendant No. 3 had no right or title to execute any sale deed in respect of the suit land of khasra No.397 as he had already sold his entire $1/3^{\text{rd}}$ share of 124 square yards in khasra No.397 to the defendants No.1 &



2 in the year of 1997, which had previously come to his exclusive share through Bahmi Batwara in the above khasra number. The remaining suit land of 250 square yards in the above khasra number had come to the exclusive share of plaintiff No.3 and is now owned and possessed by the plaintiffs and the proforma defendant. The defendants have not constructed any boundary walls over the suit land of the plaintiffs, nor were they entitled in any manner to construct such walls. The alleged report, if any, made by the said revenue officials/Naib Tehsildar is false and fictitious one, as only Tehsildar being C.R.O. and not Naib Tehsildar, is competent to make any kind of such report in respect of any land situated in the revenue estate of Safidon. The alleged report, being illegal, is ineffective against the rights and interest of the plaintiffs and proforma defendant as the same has only been prepared by the said revenue officials at the instance of and in collusion with the defendants without any right or authority. Further, no notice was served to the plaintiffs by the said officials before preparing the above false report. The defendants No. 1 & 2 are not bonafide purchasers since despite of having full knowledge of the ownership of plaintiff No.3 of the suit land since the year of 1997, the defendants No.1 & 2 allegedly purchased the suit land of the plaintiffs from defendant No.3 in a fraudulent manner without any right or title. The defendants in collusion and connivance with each other hatched a criminal conspiracy to grab the



valuable suit land of the plaintiffs and thereby knowingly caused illegal and wrongful loss to the plaintiffs.

7. From the pleadings of the parties, following issues were framed on 21.09.2007: -

“1. Whether the plaintiffs are owners in possession of the suit land? OPP.

2. Whether the sale deed No.2908 and 2909 dated 10.2.2006 and mutations No.9741 and 9742 be declared as null and void? OPP.

3. Whether the suit of the plaintiffs is not maintainable in the present from? OPD.

4. Whether the plaintiffs have not come in the Court with clean hands?OPD.

5. Whether the plaintiffs have got no cause of action and locus standi to file the present suit? OPD.

6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.

7. Relief.”

8. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court vide judgment and decree dated 10.09.2010 had dismissed the suit of the plaintiffs. However, Civil Appeal No.130 of 2010 filed by the plaintiffs was allowed by the learned Additional District Judge, Jind vide impugned judgment and decree dated 19.09.2014, in the following manner: -

“32. As a sequel to aforesaid discussion, the instant appeal is hereby allowed with costs. Judgment and decree dt 10.9.2010



passed by learned court below is hereby set aside. The suit of the plaintiffs is decreed with costs in the manner that plaintiffs and proforma defendant no. 4 are held to be owner in possession of the suit land on the date of filing of the suit. Sale deeds No. 2908 and 2909 Ex.P21 and Ex.P22 of 10.2.2006 (Ex.D1 and Ex.D2) executed by defendant no.3 in favour of defendant no.1 and 2, and subsequent mutations No. 9741 and 9742 are held to be ineffective, inoperative and not binding qua the rights of the Plaintiffs and proforma defendant no. 4 over the suit land. Plaintiffs are held entitled to relief of permanent injunction and defendants are hereby restrained from digging, laying foundation, raising any kind of construction, earth filling etc. and from making any kind of interference in the peaceful possession of the plaintiffs and proforma defendant no. 4 over the suit property. The defendants no. 1 to 3 shall not have any right over the wall raised over suit property during the pendency of the suit.”

Hence, present second appeals by the defendants.

9. It is inter alia submitted by learned counsel for the appellants/defendants No.1 and 2 that a person who seeks injunction must prove that they are in possession of the suit land. It is not in dispute that the suit land has already been sold by the defendant no.3 to defendant no. 1 and 2 vide Sale Deeds dated 10.2.2006. The present suit has been filed only thereafter on 1.4.2006, meaning thereby on the date of filing of the suit plaintiffs were not in possession of the suit property; and therefore they are not entitled for the relief of permanent injunction as prayed. So,



the impugned judgment and decree passed by the Ld. Lower Appellate Court is liable to be set aside.

9.1. It is further pointed out that the judgment and decree passed by the Ld. Lower Appellate Court is based upon mis-appreciation of evidence as, it is admitted by plaintiff witness himself that defendants were in possession of the suit property. It is submitted that in this situation, injunction could not have been granted to the plaintiffs.

9.2. It is further submitted that the Ld. Lower Appellate Court ignored the fact that even if the case of the plaintiffs is taken to be true (for the sake of arguments only) that the mutual partition took place between the parties by way of Bahim Batwara dated 15.1.1989 and Bahmi Batwara Yaddast dated 22.8.1997, even so, it is proven fact on record that the said alleged partition was never carried out. In **Siromani v. Hemkumar and others AIR 1968 S.C. 1299**, the Supreme Court laid down that according to provisions of Section 17(1)(b) of the Registration Act, 1908, a document effecting partition by metes and bounds of properties of which the value is more than Rs. 100/-, the registration is compulsory and in absence of such registration, it is inadmissible to prove title of any person to any of the property. In this eventuality when document of partition was unregistered, the same could not be relied upon.

9.3. It is further submitted by learned counsel for the appellants that once application of amendment of the plaint was dismissed on dated



16.01.2007 and no remedy by way of appeal/revision availed by the plaintiff therefore plaintiff has waived and forfeited his right to challenge the sale deed by way of doctrine of waiver and in a mischievous and clandestine manner introduced the relief of declaration to set aside the sale deed by way of replication by fully knowing that defendant would not get an opportunity to rebut the same by filing any counter pleading or response and valuable right of the defendant would be lost.

9.4. Ld. Counsel also submits that the Ld. Lower Appellate Court was wrong in holding that defendant no.3 has no right to alienate more than his share or specific Khara number; whereas as per the settled law, any alienation out of the joint property by a co-sharer would amount to alienation of the property out of the share. Even the alienation of any specific khasra number or specific portion amounts to alienation of the share which is subject to adjustment at the time of partition. It is also well settled that suit for permanent injunction against a co-owner is not maintainable. Therefore, judgment and decree passed by the Ld. Lower Appellate Court is wholly perverse and not sustainable in the eyes of law.

9.5. It is further submitted that the Ld. Lower Appellate Court emphasized on the fact that there are recitals in the sale deeds with respect to the fact of mutual partition between the parties and therefore held that inference can be drawn with respect to the mutual partition whereas recitals in documents not inter parties are inadmissible in evidence under



sections 11, 13(a), 32(3) and 32(7) of the Evidence Act. The only method by which recitals in a document not inter parties could be admitted in evidence is by examination of the executant of the document in which such recitals are found. Admittedly, defendant no.3 was not examined in a present case. Hence, the recitals in the sale deed not inter parties to the present suit are not admissible in evidence. This aspect of the matter has been ignored by the Ld. Lower Appellate Court and therefore judgment and decree passed by it is liable to be set aside.

9.6. It is submitted that the Ld. Lower Appellate Court observed in the judgment that sale deeds of 2006 Ex. P19 and Ex.P20 executed by defendant no.3 in favour of defendant no.1 and 2 are not binding upon the plaintiffs whereas the possession of the suit land has been given to the appellants by defendant no.3 on the basis of said sale deeds. Still the plaintiffs did not challenge the above said sale deeds while filing the present suit for the reasons best known to them. It cannot be said that the above said sale deed Ex.P19 and Ex. P20 were not in the knowledge of the plaintiffs especially when the parties to the suit land had been indulging in various compromise/deed of partition etc and especially when parties to the suit are quite vigilant towards their share in their respective lands nor is this the case of the plaintiffs that they were not in the knowledge of the above said sale deeds. The plaintiffs had filed an application for amendment of plaint for challenging the above said sale deeds which was



dismissed on 16.1.2007 by the Ld. Trial Court. Therefore, the Ld. Lower Appellate Court is not justifiable to conclude that the above said sale deeds are not binding upon the plaintiffs.

10. Ld. counsel for defendant No.3 (appellant in RSA-3206-2015) also submits that it was alleged by the plaintiffs that Partition had already taken place. However, there was no registration of the same and even no Revenue Entry recording the said Partition. The Bahami Batwara is denied. The property was still joint between all the parties. It is submitted that in this situation, defendant No.3 was well within his rights to sell the suit land to the defendants No.1 and 2. The release deed executed by plaintiff No. 3 is illegal because according to the revenue record, defendant No. 3 was the owner of the suit land. The possession of the suit land has been delivered to Defendant No. 1 and 2 after execution of the sale deed. It is further submitted that if any signature has been obtained by the plaintiff No. 3 in good faith of defendant No. 2 by misrepresentation being real brother on any documents same has no value.

11. Per contra, learned counsel for the plaintiffs/respondents No.1 to 3 herein vehemently opposes the submissions made on behalf of the appellants and submits that fraud had been committed by the defendants No.1 to 3 in collusion with each other. It is submitted that a partition had indeed taken place between the parties, pursuant to which, defendant No.3 had first sold his share of 124 square yards to the defendants No.1 and 2 vide



Sale Deeds of 1997. Thereafter, in a dishonest manner and with a view to grab the property of the plaintiffs, defendant No.3 had sold even the share of the plaintiffs vide impugned Sale Deed to the defendants No.1 and 2 in 2006. It is submitted that the suit land in dispute is situate in Khasra No.397 which is total measuring 375 square yards. As per the Partition, 1/3rd share each had fallen to the plaintiffs and defendant No.3. Therefore, the only share of defendant No.3 was 124 square yards, which he had already sold to defendants No.1 and 2 by the Sale Deeds of 1997. Plaintiffs were not in knowledge of the impugned Sale Deeds of 2006 by which defendant No.3 had sold their share in suit land/Khasra No.397 to defendants No.1 and 2. As such, the same could not be challenged. It is further submitted that possession of the plaintiffs upon the suit land is proved from the Jamabandi of the year 2009-10 (Ex.P37).

11.1. It is submitted that even criminal proceedings were initiated by the plaintiffs against the defendants for the fraud committed upon the plaintiffs by the defendants. In the said criminal proceedings, the defendants have been convicted.

11.2. It is also submitted by learned counsel for the plaintiffs that in the plaint, prayer had also been made by the plaintiffs for grant of decree of mandatory injunction. It is submitted that therefore, the relief prayed for by the plaintiffs could not have been denied to them. Therefore, suit was rightly decreed in favour of the plaintiffs by the Id. lower Appellate Court.



11.3. Ld. Counsel further submits that the argument put forth by the appellants that the present suit is a simplicitor permanent injunction suit and hence the same is not maintainable, is also vague and baseless. The way the appellants question the very maintainability of the suit by assailing the same to be a suit for permanent injunction alone is at all not sustainable and is also misleading being a misrepresentation of fact not only in view of the relief of mandatory injunction having already been sought in the suit, but also in the light of the fact that Issues No. 1 & 2 have been specifically framed and decided in detail by the First Appellate Court on the basis of the pleadings of the parties and evidence led by the parties particularly due to the reason that the appellants-defendants are claiming their alleged ownership and possession only on the alleged basis of the impugned sale deeds of year 2006. The issue No. 2 reads thus "*Whether the sale deeds No. 2908 and 2909 dated 10.02.2006 and Mutations No. 9741 and 9742 be declared as null and void ? OPP*". In this regard it is relevant to mention here that the trial court has failed to discuss and decide the above Issue in spite of the fact that the plaintiffs & proforma defendant have adduced cogent, reliable and sufficient evidence on this aspect whereas the First appellate Court has properly appreciated the evidence of the plaintiffs in a right perspective and returned its detailed findings regarding the same in favour of the plaintiffs by passing a speaking order supported by facts and reasons and has accordingly declared the impugned sale deeds of year 2006 to be



ineffective, inoperative and not binding qua the rights of the plaintiffs over the suit land and has granted the relief of permanent injunction in favour of the plaintiffs and has also declared them to be owners in possession of the suit land. The findings recorded by the First Appellate Court do not suffer from any illegality or perversity and are perfectly sound and legally sustainable. Rather, the findings recorded by the trial court suffer from patent illegality and perversity of approach and are legally unsustainable. The First Appellate Court has rightly decreed the suit of the plaintiffs by duly considering the fact of lis-pendens construction raised by the appellants as the courts always have inherent and discretionary powers to do substantial and complete justice to the parties. Even the Hon'ble Supreme Court of India has affirmed this settled legal proposition and has held thus "*Suit for permanent and mandatory injunction - Suit is maintainable, where the defendants have illegally constructed the structure over the suit property, as relief of demolishing the illegal structure in substance was for possession of the property*" as reported in **2017(1) Recent Apex Court Judgments (RAJ) 65 in Vishram @ Prasad Govekar & Ors. Vs. Sudesh Govekar (D) By LRs & Ors.**

11.4. It is further submitted that the appellants cannot take the objection that the private partitions were not registered or were not entered into the revenue record on account of the fact that the appellants themselves had taken benefit of the said partitions by way of sale deeds of



1997. Moreover, it is a settled proposition of law that a private partition having taken place in the past and having been acted upon and given effect to is not invalid in law on account of the same being unregistered and the courts must respect them and ought not to discard the same. Reliance in this regard is placed on **2006(1) SCC 148** in case titled **Amteshwar Anand Versus Virender Mohan Singh & Ors.** and **2010(2) SCC 77** in case titled **Narendra Kante Versus Anuradha Kante & Ors.** Further, the private partition amicably entered into by all co-sharers and subsequently acted upon by them is fully valid in law and admissible in evidence even if not reflected in the revenue record. Reliance is placed on **Mohan Singh & Others Vs. Lachhman Singh 1992 PLJ Page 403 P & H;** and **Ajmer Singh Vs Dharam Singh 2006(2) RCR (Civil) Page 541 P & H.**

11.5. Ld. Counsel for the plaintiffs has also been at great pains to impress upon this Court that the Report dated 4.4.2006 was procured by the appellants from the revenue officials, in a clandestine manner. It is accordingly submitted that there is no merit in the present appeals and the same deserve to be dismissed.

12. No other argument is made on behalf of the parties.

13. I have heard learned counsel and perused the case file in great detail. I have given my thoughtful consideration to the rival submissions made on behalf of both the parties. After considering in depth the arguments as well as going through the record of the case in minute detail,



I find myself unable to agree with the case as set up by the plaintiffs/respondents.

14. Briefly recapitulated, the facts are:

Rattan Chand		
┐		
Umesh Aggarwal	Brijeshwar Aggarwal (Plaintiff No. 3) Santosh Aggarwal (Wife) (Plaintiff No. 1)	Anil Aggarwal (Defendant No. 3)
┐		
Vineet Aggarwal (Plaintiff No. 2)	Ashish Aggarwal (Performa Defendant No. 4)	

14.1. The plaintiffs had filed the instant suit with the prayer for Permanent Injunction restraining the defendants from digging, laying foundation, raising any kind of construction earth filling etc. and from making any kind of interference in the peaceful possession of the plaintiffs and Proforma defendant No. 4 as owners over the plot measuring about 252 square yards comprised in khasra No. 397 min (397/2 and 397/5) situated at Railway Road, Safidon. It was their case that Plaintiffs & Performa Defendant No. 4 were owners in possession of the suit land by way of private partition i.e. Bahami Batwara dated 15.01.1089, mutation No. 6753 and 6905 partly by way of mutual transfer, Tabadla, Bahmi Batwara Yaddasht dated 22.08.1997 and through Release Deed No. 3452 dated 28.03.2006. Plaintiffs & Performa Defendant No. 4 are now owners in possession of suit land by



virtue of their 2/3rd share (255 sq. yards), 1/3rd share had come to Plaintiff No. 3 on the basis of mutual transfer with his brother Umesh Aggarwal (PW3).

14.2 However, the Suit for Permanent Injunction filed by Plaintiffs was dismissed by the learned trial court; and in first appeal suit was decreed whereby “.....*plaintiffs and proforma defendant no. 4 are held to be owner in possession of the suit land on the date of filing of the suit. Sale deeds No. 2908 and 2909 Ex.P21 and Ex.P22 of 10.2.2006 (Ex.D1 and Ex.D2) executed by defendant no.3 in favour of defendant no.1 and 2, and subsequent mutations No. 9741 and 9742 are held to be ineffective, inoperative and not binding qua the rights of the Plaintiffs and proforma defendant no. 4 over the suit land. Plaintiffs are held entitled to relief of permanent injunction.....*”.

14.3 The judgment and decree of the learned lower Appellate Court is prima facie unsustainable on the ground that it is an established position in law that in a suit for permanent injunction, only possession of the parties is required to be seen. It is settled principle of law that scope of injunction is limited to only possession. The Court is not required to examine title or ownership at this stage, but only whether the plaintiff is in settled possession. In the present case, it has been admitted by plaintiff witnesses themselves that the defendants no.1 and 2 are in possession of the suit property. It is established fact on record that the defendants no. 1 & 2 had purchased the suit land from the defendant no. 3 vide registered sale deed no. 2908 of 10.02.2006 and registered sale deed no. 2909 of 10.02.2006 for



valuable consideration; and since the date of purchase, the said defendants are exclusive owners in possession of the suit land measuring 252 sq yards. The recitals in the sale deeds Ex. P-19 and Ex. P-20 regarding delivery of possession of the suit land by the defendant No. 3 to the defendants No. 1 and 2 are conclusive proof of the fact that they are in possession of the suit land. The defendants have constructed boundary wall over the suit land much prior to the filing of present suit. The revenue authorities i.e. Tehsildar and Halqa Patwari and respectables of Safidon also verified the physical possession of the defendants no. 1&2 over the suit land vide report dated 4.4.2006 made by Halqa Patwari and Tehsildar, Safidon. Thus, defendants no. 1&2 are in possession of khasra no. 397/2 and 397/5 as co-sharers measuring 8 marla. In fact, the very fact that the plaintiffs have sought a decree of mandatory injunction against the appellants, proves that appellants are in possession. In such a situation, in view of the possession of the defendants over the suit property, suit could not have been decreed.

14.4 However, the learned first Appellate Court has disregarded the above facts simply by holding that “...A simple report of revenue official that at the spot possession was of Pradeep Kumar and Poonam Devi would not be sufficient to hold their possession from the date of their sale deeds dated 10.2.2006 as no construction was detailed or found at the spot on 4.4.2006. A Judicial notice can be taken of the scaled site plan available on file prepared at the instance of defendant no.1 Pradeep, where only mention of some brick



without cement or clay is there up to 4'2" height. These facts would not indicate that the defendants were in possession over the suit land prior to the institution of the suit." However, in holding as above, the learned first Appellate Court has totally ignored the fact that possession of the defendants No.1 and 2 over the suit land has been admitted by plaintiff witness himself, namely Umesh Aggarwal PW3. PW-3 (Umesh Aggarwal) in his cross-examination has admitted that Defendants No. 1 & 2 have constructed walls upon the suit land up to the height of roof. It means that the defendants no. 1 & 2 are in possession of the suit land. PW3 has further admitted that the defendant no.3 had executed sale deeds in favour of the defendants no.1 and 2 in the year 2006; and that he cannot tell as to how much land is still remaining with the defendant no.3 in khasra no. 397; and that any of the 3 brothers did not raise any objection regarding the lands sold by them except the present suit.

15. As per Section 58 of the Evidence Act, admission is the best evidence. The Hon'ble Supreme Court in **Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary (SC) Law Finder Doc Id # 83537**, has held that an "*admission of fact is good evidence*" against the person admitting the same unless it is legally explained away to be made under a bona fide mistake. That is not so in the present case.

15.1 The Hon'ble Supreme Court in **Union of India vs. Moksh Builders and Financiers Ltd and others 1977 AIR, SC 409** has held that



“admissions duly proved are admissible evidence irrespective of whether that party making them appeared in the witness box or not.”

15.2 Further in **Hub Lal Singh (D) represented by LR's and Another vs. Sheo Balak Singh and others, 2014 (1), RCR (Civil), 1573, Allahabad High Court** has held that *“An admission has been considered to be best evidence for the reason that section 58 of the Evidence Act, 1872 states that the fact admitted need not be proved. An admission in pleading means admission of an averment by the opposite parties. However, party making admission cannot take advantage of it, and on the contrary, the party in whose favour it is made, may get its benefit.”*

15.3 Reliance may also be placed upon judgment of the Hon'ble Supreme Court in **Vathsala Manickavasagam v. N. Ganesan (SC) 2013(4) RCR (Civil) 22**, wherein it is held as under:-

“24. As far as the principle to be applied in Section 17 is concerned, the Section as it reads is an admission, which constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts, incorporated therein. When once, the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity,



vagueness or confusion. In this context, it will be worthwhile to refer to a decision of this Court in **Union of India v. Moksh Builders and Financiers Ltd. and others, AIR 1977 Supreme Court 409** wherein it is held as under :

*"It has been held by this Court in **Bharat Singh v. Bhagirath [1966] 1 SCR 606** that an admission is substantive evidence of the fact admitted, and that admissions duly proved are "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions." In taking this view this Court has noticed the decision in **Ajodhya Prasad Bhargava v. Bhawani Shanker, AIR 1957 Allahabad 1 (FB)** also."*

15.4 The Hon'ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D)** by Lrs. (SC) 2011 AIR SC (Civil) 1418, has held as under:-

"16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as



per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings."

16. Be that as it may, even PW-5 Brijeshwar Aggarwal/Pff No. 3 has stated that defendant No.3 had already sold his entire share out of the suit land and that only 50/60 square yards of land is left with the defendant no.3. However, this statement is contrary to and in contradiction of the allegations contained in the plaint and in the Ikrarnama Bahmi Yaddasht Batwara Ex. P5, wherein it has been mentioned that the defendant No.3 has not even single inch of land remaining in khasra no. 397. The statement of PW5 also means that parties to the suit and Umesh Aggarwal PW-3 are still co-sharers/co-owners of the suit land but the plaintiffs are not in possession of the suit land. In this situation, appropriate remedy available to the plaintiffs was to file suit for partition and not an injunction.

17. In the above circumstances, it would be apposite to refer to a Division Bench judgment of this Court in **Bachan Singh Vs. Swaran Singh (P&H)(DB) : Law Finder Doc Id # 18843** wherein it is held that:

"15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that :

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless



any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

18. Thus, the proper remedy for the plaintiffs was to file Civil Suit for Partition, as injunction cannot be sought against a co-sharer.

19. It is next to be seen that it is admitted fact on record that the plaintiffs have not challenged the Sale Deed No.2908 dated 10.02.2006 (Ex.P19) and Sale Deed No.2909 dated 10.02.2006 (Ex.P20) executed by defendant No.3 in favour of defendants No.2 and 1 respectively. The said sale deeds have not been challenged even though the instant suit was filed thereafter on dated 01.04.2006. Despite this, the learned first Appellate Court has gone on to declare the said Sale Deeds of 2006 as void. Clearly, the learned lower Appellate Court went beyond its jurisdiction in dealing with the Sale Deeds and in declaring the Sale Deeds as ineffective. It is my



clear view that it was not open for the learned first Appellate Court to expand the scope of the Civil Suit, which was only to determine the possession of the parties. To lay challenge to the said registered Sale Deeds, it was necessary for the plaintiffs to file a Civil Suit for Declaration. That has not been done. In the absence of a prayer for declaration, the learned first Appellate Court could not have declared the sale deeds invalid and ineffective. Even otherwise, the said Sale Deeds, being registered, carry presumption of truth.

19.1. In declaring the Sale Deeds ineffective, the Id. first Appellate Court also lost sight of the fact that the plaintiffs had first filed an application for amendment of plaint for challenging the above said sale deeds, which application was dismissed on dated 16.01.2007; and which order attained finality as no revision petition/appeal was filed by the plaintiffs. As such, to grant relief of declaration in the present suit would also militate against the order dated 16.1.2007; which is not permissible as per law.

19.2. After the dismissal of their application for amendment of plaint on 16.01.2007, the plaintiffs had instead, filed replication dated 7.2.2007 to the written statement of the defendants No. 1 to 3. It is in the replication that the plaintiffs sought to further obfuscate the process of law, by stating about various sale deeds including Ex P-19 and Ex P-20; and sought declaration, by way of replication, by stating therein that the said Sale Deeds of 2006 were ineffective and not valid. Vide the impugned judgment dated



19.9.2014, the learned first Appellate Court, in violation of all principles of law, has indeed granted such a declaration. The only reasoning given by the learned first Appellate Court in holding the sale deeds dated 10.2.2006 as invalid is that *"It is settled proposition of law that to do justice between the parties, the court can grant relief do not specifically claimed and can also mould the relief to deliver the Justice."*

19.3. However, the said reasoning is unacceptable as, needless to say, the sale deeds were to be challenged at affirmative stage at the time of filing of the suit; and could not have been challenged by way of replication. No doubt, the replication is a part of pleading, but replication cannot replace the plaint. In this manner, the defendants have not got any chance to admit or deny the allegations which were averred by the plaintiffs for the first time in their replications and which were not disclosed by them in the plaint. Whereby great injustice has been caused to the defendants. Even otherwise, no right can accrue to the plaintiffs on the basis of replications; especially in view of the fact that their application for amendment of plaint to include challenge to the sale deeds, had been dismissed finally.

19.4. Further, even the Issue No. 2 regarding validity of sale deed dated 10.02.2006 and mutations no. 9741 and 9742, was wrongly framed by the Ld. Trial Court only on the basis of replication. The Issue No. 2 is also contrary to the original prayer of the plaintiff which was with regard to permanent injunction only; and which was not allowed to be amended by



the Ld. Trial Court into suit for declaration to assail the sale deed. It is imperative to appreciate that the suit is framed as a suit for permanent injunction and only the possession of the parties is to be seen; whereas the Ld. Courts below have framed the issue regarding the validity of the sale deed by bypassing the order dismissing the amendment of the plaintiff dated 16.01.2007. Against dismissal of application for amendment no remedy was availed in the form of appeal/revision by the plaintiff. In this situation, a declaration w.r.t. sale deeds dated 10.2.2006 could not have been issued.

19.5. Thus, in the above noted facts and circumstances, the only remedy for the plaintiffs was to file a Civil Suit for Declaration, or Partition. The proper remedy for the plaintiffs is to file Civil Suit for Declaration because the issues as to whether the Sale Deeds are effective or non-effective, binding or not binding, etc. are all to be decided in a Civil Suit for declaration, or Partition; and cannot be decided in a Civil Suit of the present nature. In Civil Suit for permanent injunction, only possession has to be seen. Moreover, suit for injunction is not maintainable against co-sharer. Even simple suit for injunction without declaration is not maintainable. Admittedly, even till date, plaintiffs have not challenged Sale Deeds of 2006.

19.6. Yet, the Id. First Appellate Court in Para No. 21 of it's judgment dated 19.9.2014, has given completely wrong findings on the validity of the sale deeds by overlooking the fact that sale deeds cannot be challenged for the first time in the replication. As stated above, the suit was filed on



01.04.2006 *after* the sale deeds were executed prior in time on 10.02.2006. Therefore, challenge to the sale deeds should have been made at the time of filing of the suit at affirmative stage. Scope of replication and plaint are entirely different and challenge to the sale deed does not come within the scope of replication and same comes within the scope of plaint. In this regard, reference is made to judgment of Hon'ble Supreme Court in **Shivanna v. B.S. Puttamadaiah (Dead), (SC) : Law Finder Doc ID # 2494608**, wherein in Para 11, it is held as follows:-

*“11...The suit was filed by the plaintiff seeking declaration and injunction and the Appellate Court after dismissing the suit could not have then issued the declaration of title and possession, in favour of the defendant, particularly when the defendant never claimed any such relief from the Civil Court. It is well-settled in law that the principle of moulding of reliefs could at best be applied as an exception. This Court in **Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256** laid down the following conditions where the relief could be moulded:*

“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied:



(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.""

19.7. It is reiterated that the plaintiffs ought to have challenged the sale deeds in the first instance itself by filing a suit for declaration. Then the plaintiffs had sought to amend the plaint, which prayer already stood rejected vide order dated 16.1.2007, and which order had attained finality. I cannot emphasize enough that in such a situation, plaintiffs could not have been permitted to lay challenge to the sale deeds by way of replication. The afore-noted reasoning given by the first Appellate Court that *"It is settled proposition of law that to do justice between the parties, the court can grant relief do not specifically claimed and can also mould the relief to deliver the Justice."*, is on the face of it illegal, unjust, and untenable being contrary to basic tenets of Civil Law.

19.8. I am supported in my view by a judgment of the Hon'ble Supreme Court in **The Tehsildar, Urban Improvement Trust v. Ganga Bai**



Menariya (Dead) through LRs (SC) : Law Finder Doc ID # 2501699, wherein

it is held that: -

“22.2 Civil Suits were filed claiming that the land in question was leased out to the plaintiffs on 27.08.1985 (as is evident from the judgment of the Trial Court). However, in the documents annexed with the I.A. No.148204 in C.A. No.8977 of 2012, the transaction is shown to be sale. Though no prayer was made in the suit seeking a declaration as owner of the land as it was simpliciter for permanent injunction still the Trial Court framed the issue whether the disputed plot is of the ownership and possession of the plaintiff'. The second issue framed was as to whether the plaintiff is entitled to permanent injunction'. Both the issues were taken up together. While discussing the Issue no.1, the court recorded the ownership part was not to be gone into as it was merely a suit for permanent injunction but still it was to be considered as to whether the possession was valid or not. In support of his plea the plaintiff/respondent placed on record the document dated 27.08.1985, the lease deed. However, the same was not proved. The court also considered about the right of the Gram Panchayat to lease out the land with reference to the Rules applicable therefor. Finally, the Trial Court came to the conclusion that no case was made out by the plaintiff/respondent. Hence, the suit for permanent injunction was dismissed by the Trial Court on 30.04.2003.”

19.9. Under the circumstances, a judgment of this Court in **Surinder**

Kumar Sharma v. Jagdish Rana, (Punjab And Haryana) : Law Finder Doc ID

2312648, is most apposite, relevant part of which is as under:-



"A suit for permanent injunction without seeking declaratory relief regarding title is not maintainable, especially when the title of the suit property is under dispute.

A. Specific Relief Act, 1963 Sections 34 and 38(1) - Suit for permanent injunction - Plaintiffs failed to seek declaratory relief regarding title of the property - Held, suit for injunction simpliciter without seeking declaration is not maintainable when the title of the suit property is under dispute - Relief of injunction is consequential to declaration of proprietary rights.

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15. Further in my view the suit for injunction is not maintainable without seeking declaration qua proprietary rights of the suit property. In this context, reference may also be had to Section 34 read with section 38 (1) of the Specific Relief Act, 1963 (for short 'Act'). The same are extracted herein below:

"34. Discretion of court as to declaration of status or right-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

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38. Perpetual injunction when granted.-(1) Subject to the other provisions contained in or referred to by this



Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication."

16. From perusal of the above, even otherwise, it was required on the part of plaintiff-appellants to have sought declaration while seeking relief of injunction which is consequential benefit to the declaration.

17. Reference may also be had to Apex Court judgment ***dated 07.09.2021 rendered in CA Nos-5575-5576-2021 in case titled Kayalulla Parambath Moidu Haji v. Namboodiyil Vinodan***, wherein it is held that simpliciter suit for permanent injunction without seeking declaratory relief qua the same is not maintainable, especially in a case where title of the suit property is disputed, as is the case herein. For ready reference, Paras-10 to 12 of the same are reproduced, as below:

"10. The short question that falls for consideration before us is:

Whether the learned Single Judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?

11. The issue is no more res integra. The position has been crystalized by this Court in the case of Anathula Sudhakar (supra) in paragraph 21, which read thus:-

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction,



is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiffs lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

*(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar **[Annaimuthu Thevar v. Alagammol, (2005) 6 SCC 202]**). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*



(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

12. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction."

18. Thus, without seeking relief qua the proprietary rights on the title of the suit property by way of declaration, plaintiff-appellants are not entitled to any injunction."



19.10. Reference is also made to a judgment of this Court in **Dev Ram v. Swarna Ram, (Punjab And Haryana) : Law Finder Doc ID # 2201894**, wherein it is held as under:-

“12. While there is no quibble on the proposition of law canvassed by learned counsel for Appellant that there is no absolute bar for filing a suit for permanent injunction without seeking a prayer for declaration, however, given that Appellant has himself inter alia admitted in his cross-examination that Respondent was in possession of suit property for the last more than 20 years and that electricity connection installed in the suit property was also in the name of Respondent, learned Courts below have thus rightly non-suited Appellant/plaintiff. Facts of present case are clearly distinguishable from the facts of the case law referred to by learned counsel for Appellant.

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16. Perusal of the above clearly reflects that without seeking relief qua the proprietary rights on the title of the suit property by way of declaration, plaintiff-Petitioner is not entitled to any injunction.”

19.11. The Ld. Lower Appellate Court has further erred in Para No. 20 of it's judgment by placing reverse onus upon the defendants to prove the validity of the sale deeds rather than placing onus upon the plaintiffs to disprove the sale deed which issue cannot be gone into in a suit for permanent injunction. As noted above, from Para No. 21 onwards Ld. Lower Appellate Court has gone into discussion about the validity of the sale deed



by completely overlooking the fact that in a suit for permanent injunction which was not allowed to be amended into suit for declaration, no finding of title or ownership can be given. Further, Ld. Lower Appellate court considered the findings of the criminal court again by overlooking the fact that criminal proceedings are different from civil proceedings and findings of criminal court are not binding upon the civil court.

20. Furthermore, the case of the plaintiffs is based on a private partition dated 15.01.1989 (Ex.P1); and an Agreement regarding mutual exchange dated 12.08.1997 (Ex.P4); and a Memorandum of Private Partition dated 22.08.1997 (Ex.P5). As per Section 123 of the Haryana Land Revenue Act, every Settlement has to be entered into Revenue Record. However, none of the above-said three settlements/compromises have either been registered (as required vide judgment of the Hon'ble Supreme Court in **Shiromani supra**); or entered in the Revenue Record as required by Law. Moreover, the said compromise (Ex.P4) has not even been signed by defendant No.3 i.e. vendor of the defendants No.1 and 2. It is not clear that in this admitted fact, how are the plaintiffs claiming that defendant No.3 was a party to, let alone bound by the said settlements. The lower Appellate Court has failed to appreciate that the plaintiffs had sought only a decree for permanent injunction; and instead, only on the basis of the above-said three documents (Ex.P1, P4 and P5) has not only decreed the suit of the plaintiffs, but also declared the sale deeds invalid and ineffective.



20.1. In this regard, the following facts and findings of the learned trial court in judgment dated 10.9.2010 are important. Admittedly, the Memorandum of Partition/Deed of Partition dated 15.01.1989 Ex P-1 is between Duni Chand, Vijay Ram, Tarlok Chand, Sheetal Parkash sons of Kali Ram - and legal representatives of Rattan Chand son of Kali Ram i.e. Shanti Devi wife of Rattan Chand, Brijeshwar Aggarwal, Umesh Aggarwal and Anil Aggarwal sons of Rattan Chand. However, in the said Deed of Partition Ex P-1, there is no reference of any Jamabandi, Girdawari or mutation. It has not been stated in Ex P-1 that to whom the land measuring 548 square feet out of 34 Kanals 2 Marlas was sold; and how much area the LR's of Rattan Chand were owners of in Khasra Nos. 397 and 400; and how much of area has been sold by other four co-sharers. Even, it is not mentioned in Ex P-1 as to how much was the total area of Khasra Numbers 397 and 400. In this circumstance, it is not clear as to how the plaintiffs are alleging that partition had taken place and shares of the parties were demarcated.

20.2. The plaintiffs have also relied upon agreement to mutual transfer dated 12.08.1997 Ex P-4 vide which plaintiff No. 3 had given his share in Rect. No. 78, Killa No. 28/2 measuring 90 square yards to Umesh Aggarwal; and Umesh Aggarwal had given his share out of Khasra No. 397/5 measuring 140 square yards to plaintiff No. 3. It has also been mentioned in Ex. P-4 that Umesh Aggarwal would have no concern whatsoever with Khasra No. 397/2 and 397/5. Again, there is no reference of any Jamabandi,



Girdawari or mutation in Ex P-4 also and how much is the total area of Rect. No. 78, Killa No. 28/2 and also of Khasra No. 397/5. Further there is no signature of third brother i.e. defendant No. 3 on Ex P-4.

20.3. The plaintiffs have also relied upon Ikrarnama Bahmi Yaddast Batwara Ex. P-5 between plaintiff No. 3 and defendant No. 3 to the effect that defendant No. 3 had already sold his 1/3rd share in Khasra No. 397 min i.e. 124 square yards vide registered sale deed No. 569 dated 15.07.1997 Ex PW9/F and sale deed No. 590 dated 24.07.1997 Ex PW 9/G to Defendants No. 1 & 2 and that defendant No. 3 had not been left with any share in the land comprised in Khasra No. 397. Ex P-5 has been signed by Umesh Aggarwal as a witness only. In Ex. P-5 also neither total area of Khasra No. 397 min, nor the area of Khasra No. 397/2 or 397/5 have been mentioned nor there is any reference of any Jamabandi, Girdawari or mutation. Thus, all the above said three documents Ex. P-1, Ex. P-4 and Ex P-5 relied upon by the plaintiffs, are absolutely vague, unregistered, and not reflected in the revenue record. As such, veracity of the said documents is dubious.

20.4. At the risk of repetition, it is reiterated to bring home the point that there is no past transaction in memorandum of partition/deed of partition Ex P-1; and there are no signatures of defendant No. 3 on agreement regarding mutual transfer dated 12.08.1997 Ex P-4; and Umesh Aggarwal has signed the Ikrarnama Bahmi Yaddast Batwara Ex P5 only as a witness. Further all these three documents Ex. P-1, Ex. P-4 and Ex. P-5 have



never been registered (Ref. **Shiromani supra**) or entered in any revenue record, and this fact has been admitted by PW-2/Ram Gopal, PW-3/Umesh Aggarwal and PW-5/Brijeshwar Aggarwal. Unless private partition is not reflected in the revenue record same cannot be looked into.

20.5. I am supported in my above view by a judgment of this Court in **RSA-3927-2014 titled as “Balwant Singh & Others Vs. Jagmal & Others” decided on 04.08.2025**, wherein it is held as under:-

“16. Even the plea of the defendants that they are in possession of the suit land, is not substantiated by any documentary evidence. It is but trite that if defendants were in possession of the suit property then why no effort was made by them to get the revenue entries corrected which were spread over a long period of time. Consistent entries made in the revenue record in Jamabandis and Khasra Girdawaris over a long period of time, cannot be discarded as mere stray entries; and injunction cannot be denied to a party in possession even against the true owner. For the purpose of grant of injunction, the learned lower appellate Court was only required to investigate into the party having possession of the suit property. Whether or not any land was exchanged between the parties during consolidation proceedings is, in my opinion, extraneous to the issue at hand. Even otherwise presumption of truth is attached to entries in jamabandi although rebuttable. The respondents have sought to rebut the revenue entries by way of Ex.D4 vide which suit land is shown to be allotted to defendants and not to the plaintiffs and as per which “suit land was deleted from the area allotted to the plaintiffs and some other land being rectangle No. 39 killa no.



6/1 etc. was allotted to them.” However, as noticed above, only possession of the parties to be seen.”

20.6. This Court in **Richpal v. Ranjit, (Punjab And Haryana) : Law Finder Doc ID # 2552201**, has held that: -

“30. Proceeding further, apart from the fact that documents Ex.P1 & P2 are inadmissible in evidence on account of these being unregistered documents, the alleged family partition was liable to be ignored for another reason.

31. Section 111 of the Punjab Land Revenue Act, 1887, provides for application to be moved before the revenue officer for partition of his share in the land by any joint owner. The subsequent provisions lay down the procedure to effect the partition. Section 123 of the Punjab Land Revenue Act, 1887 is relevant in this case, as it provides about affirmation of partition privately effected. It reads as under: -

"123. Affirmation of partition privately affected: *In any case in which a partition has been made without the intervention of a Revenue-officer, and party thereto may apply to a Revenue-officer for an order affirming the partition".*

32. It is only after the affirmation by the concerned Revenue Officer of the partition effected privately by the co sharers, that it is considered to have come into force. In the case of Suba Singh (supra), it has been held by this Court that partition of the agricultural land outside the Court i.e., private partition becomes valid, only if same is brought to the notice of the revenue authorities and sanction is obtained and thereafter, Khata is divided, otherwise co-sharers continued to be joint owners in the same Khata. It was held as under: -



"The partition of agricultural land is governed by section 111 onwards of the Punjab Land Revenue Act. A reading of this Chapter shows that even if agricultural land is stated to be partitioned outside the Court that partition becomes valid only if the same is brought to the notice of the revenue authorities and sanction is obtained and only thereafter the Khata is divided. Other- wise, they continue to be joint owners in the same Khata."

33. In the present case, plaintiffs nowhere pleaded that they had ever applied to the revenue officer for sanctioning of the mutation based on the alleged private partition effected amongst the parties by virtue of Ex.P1 and Ex.P2."

21. The argument on behalf of the plaintiffs that as per Jamabandi for the year 2009-10 (Ex.P37), the plaintiffs are shown to be in possession, is untenable as all documents from Ex.P37 to Ex.P45 pertain to the era after filing of the suit in 2006 and are without notice to the appellants; and are based on their own *Tatima*/ Family Partition between the plaintiffs and Umesh Aggarwal. Before the learned lower Appellate Court, the plaintiffs have improved their case by virtue of these documents which cannot be permitted. The scope of the Civil Suit cannot be enlarged. The evidence beyond pleadings cannot be led and/or looked into. Therefore, even if there is any evidence disproving the sale deeds, same cannot be looked into. Since the issue regarding validity of sale deeds has been framed on the basis of replication which defendant never got the opportunity to rebut by way of filing any counter or response or rejoinder, therefore any evidence led by



plaintiff in affirmative on the validity of sale deeds cannot be looked into. In a suit for permanent injunction no finding regarding title can be given and if any finding qua title has been given same is not binding upon the parties.

22. Learned counsel for the plaintiffs has sought to prove that land of plaintiffs was sold by the impugned Sale Deeds of 2006 by submitting that the Sale Deeds of 1997 mentioned that land on eastern side was sold. However, the said assertion is vague in nature and does not in any manner prove the case of the plaintiffs. As stated by learned counsel for the appellants, eastern side was mentioned only to indicate the direction, without admitting ownership of the respondents. Moreover, it is admitted fact on record that no demarcation has been done. Even no demarcation was sought by the plaintiffs at any stage. Record reveals that from 2006 till date, the suit land is a joint holding between the parties.

23. Further, even if defendant No.3/Anil Kumar has admitted in Sale Deeds of 1997 that the said plot has come to him in Bahmi Batwara and even if there are any stray admissions by defendants No.1 and 2; no advantage can accrue to plaintiffs from the said alleged admission(s) as private partition is not registered. Most importantly, plaintiffs cannot escape the fact that they have not challenged the Sale Deeds of 2006. As such, no declaration in respect of the said Sale Deeds can be given in favour of plaintiffs.



24. Lastly it may be pointed out that the Suit is liable to be dismissed for Non joinder of necessary and proper Parties also; as Umesh Aggarwal the third brother was not impleaded as party not even performa Defendant.

25. In view of the above discussion, both the present appeals are **allowed**. The judgment and decree dated 19.9.2014 passed by the learned Additional District Judge, Jind is hereby set aside; and the judgment and decree dated 10.9.2010 of the learned trial court, dismissing the suit of the plaintiffs, is restored.

26. Pending application(s) if any also stand(s) disposed of.

15.09.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes