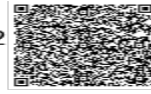
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****104****RSA-861-2018 (O&M)
Date of decision: 19.03.2025****Jagtar Singh (now deceased) through his LR ...Appellant(s)****Vs.****Mohan Singh and others ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Parvinder Singh, Advocate for the appellant.***********NIDHI GUPTA, J.**

The defendant No.1 is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the respondent/plaintiff for separation by way of partition of the property marked as ABCDEFG as shown red in colour in the site plan attached with the plaint; and the parties are in joint possession over the suit land measuring 09 marlas bearing Khewat No.81/67 min, Khatoni No.94, Khasra No.936/580(0-3), 943/584(0-3), 944/585(0-3) vide jamabandi of year 2006-07 situated in the area of village Simble Majara, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar by metes and bounds, has been decreed by both the Courts below.

2. At the very outset, it may be pointed out that the present appeal is of the year 2018. However, notice has not yet been issued in the same as the matter has been adjourned at request of Id. counsel for the appellant on 24.05.2018, 31.10.2018, 28.11.2019, 22.01.2020,

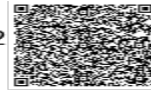


24.08.2023, 16.10.2023, 04.07.2024 and 27.11.2024; and due to non-appearance of learned counsel for the appellant on 02.05.2018 and 29.01.2024.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.1'; and the respondent No.1 is the 'plaintiff'.

4. Brief facts of the case are that plaintiff Mohan Singh had previously filed a Civil Suit No. 70 of 2010 'Mohan Singh Vs. Jagtar Singh', for permanent injunction against the present appellant/defendant no.1, in respect of the present suit property, in which he prayed that the plaintiff and the defendant are co-sharers in property comprised in khasra No. 936/580(0-3), 943/584(0-3), 944/585(0-3) situated at Village Simbal Majra Tehsil Balachaur, District Shaheed Bhagat Singh Nagar and thus, the defendants be restrained from raising any construction over the said property and be further restrained from alienating a specific portion.

5. The said suit was resisted by the defendant by contending that property in dispute alongwith other properties have already been partitioned amongst the predecessors in interest of the parties. The said suit was partly decreed by the learned Court of Civil Judge (Sr. Divn.), Balachaur, District Shaheed Bhagat Singh Nagar vide judgment and decree dated 8.2.2012 holding that no partition had taken place between the parties; and therefore, restraining the defendant from alienating any specific and valuable portion of the suit property.



6. Thereafter, plaintiff filed present suit on 2.3.2012 against appellant Jagtar Singh alongwith other defendants for separate possession by way of partition of the property as shown in the headnote of the plaint. The suit was decreed by the learned trial Court vide judgment and decree dated 4.3.2016. The appeal filed by Jagtar Singh through LR against the aforementioned judgment & decree was dismissed by the learned Lower Appellate Court vide judgment and decree dated 19.07.2017.

7. Hence, the present regular second appeal.

8. It is the contention of learned counsel for the defendant No.1 that the suit property already stood partitioned by way of oral partition in the year 1963. Therefore, it is incorrectly stated by the plaintiffs that the suit land is jointly owned and possessed by the parties. Rather the same is exclusively owned and possessed by the defendants. The revenue entries showing the suit land jointly and possessed are wrong and incorrect. This is evident from the site plans Ex.D2 to Ex.D4 which were produced by the defendants. The original site plan (Ex.D1) was produced by the defendants even in the previous Civil Suit No. 70 of 2010 which showed that the property was owned by Nathu Ram, grandfather of the defendants, who was succeeded by his three sons i.e. Sant Ram, Prita and Balbir Singh in equal shares; and they became co-owners in joint possession; and who mutually partitioned the suit property in 1963. The defendant No.1/appellant is the son of Balbir Singh; whereas the respondent No.1/plaintiff is the son of Pritu, son of Nathu Ram. In the said oral partition, the property in dispute and western part of Khasra No.936/580



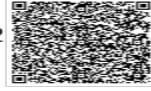
alongwith properties shown in blue and yellow colours in certified copy of site plan Ex.D2, situated on the eastern side of Khasra No.944/585 & 943/584 fell to the share of Balbir Singh, who came into exclusive possession of the same as its owner. Balbir Singh died in 1988, who during his lifetime, divided his property between appellant and his brother Ajaib Singh. Out of the said property, the property shown in blue and green colours which bears Khasra No. 943/584 and northern part of Khasra No. 944/585 fell to the share of defendant and property shown yellow in colour fell to the share of Ajaib Singh and they came into exclusive possession of the same. It is submitted that accordingly all the parties/legal heirs of the said Sant Ram, Pritu and Balbir Singh are in possession of their respective shares as owners as per the oral partition effected between them.

9. It is further submitted that the plaintiff in his cross-examination has admitted oral partition in the previous civil suit filed by him for permanent injunction. The said cross-examination of the plaintiff is placed on record before this Court as Annexure A-3. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

10. No other argument is raised on behalf of the appellant.

11. I have heard learned counsel for the appellant/defendant No.1 and perused the case file in great detail.

12. I find no merit in the submissions made on behalf of the appellant. It has been submitted on behalf of the appellant that originally the suit property was owned by Nathu Ram. Said Nathu Ram had three



sons namely Sant Ram, Preetu & Balbir Singh. The plaintiff is son of Preetu. The appellant is son of Balbir Singh.

13. It has firstly been submitted that the respondent No.1/plaintiff was not entitled for separation of his share through partition as the suit property already stood partitioned between the sons of Nathu Ram by way of oral partition that took place in 1963; and that the parties are in their respective possession. However, a perusal of the record shows that except for the bald statement made by the appellant, there is no evidence whatsoever on record to indicate that any partition had taken place between the parties. On the contrary, the revenue record in the form of jamabandi for the year 2006-07 (Ex.P2 – at page 121 LCR) clearly establishes that the suit property was still joint among the parties. This fact has even been admitted by Gurdev Kaur LR of defendant No.1 in her testimony as DW1. Needless to say, as it was the case of the appellant that the partition had transpired, therefore, onus was upon the appellant to prove the same on record. However, as noted above, no document has been produced by the appellant to establish the alleged partition. Even the revenue record is silent in this respect. It has been contended by learned counsel for the appellant that the said changes were not made in the revenue record only '*inadvertently*'. However, to my mind, it defies reason that if the partition had indeed taken place as far back in 1963 why would the parties not effect necessary changes in the revenue record to reflect the partition/ and, more importantly, to reflect their respective shares. Moreover, raising of construction by some co-sharers on certain



parts of the suit property does not by itself establish the factum of partition.

14. It has next been contended by learned counsel for the appellant that in the previous suit, the plaintiff had himself admitted in his cross-examination Ex.D-1 (at page 161 of the LCR), (the translation of which is placed on record before this Court, as Annexure A-3), that partition had taken place. However, the said contention of the appellant is liable to be rejected as, in the previous Civil Suit No. 70 of 2010 the plaintiff had sought permanent injunction restraining the appellant/defendant No.1 from alienating or raising construction on suit property. Admittedly, vide judgment dated 08.02.2012 (Ex.P3 - at page 123 to 143 of the LCR), it was held that the suit property is joint between the parties and if the appellant alienates any valuable share of the suit property then the plaintiff Mohan Singh would suffer irreparable loss. Admittedly also the said judgment and decree (Ex.P3 and Ex.P4) was never challenged by the appellant/defendant No.1 Jagtar Singh during his lifetime; nor has the same been challenged by his legal representative at any point of time. As such, even if any such stray admission was made by the plaintiff in the previous suit, as per established principles of law, the same would be inconsequential.

15. It has also been submitted by learned counsel for the appellant that the Courts below have erroneously construed a stray line from the cross-examination of DW1 Gurdev Kaur as her admission, by ignoring the lines immediately preceding the said alleged admission. The



cross-examination of DW1 Gurdev Kaur is available at Pg. 109 LCR. Perusal thereof reveals that DW1 Gurdev Kaur has stated as follows: –

“Nathu ram was having three sons, namely Sant Ram, Pritu, and Balbir. Hari Kishan is only son of Sant Ram. Pritu was having four sons, namely Darbara Singh, Mohan Singh, Gurbaksh Singh and Sohan Singh. The suit property having 9 Marlas. I am in possession of entire suit property. No partition took place of the disputed property. It is wrong to suggest that I have deposited falsely and furnished false affidavit and site plans.”

16. Thus, it has unequivocally been admitted by DW1/Gurdev Kaur/wife of Jagtar Singh in her cross-examination that the suit property is 9 Marlas and no partition had taken place. Reliance placed by the appellant upon the site plans Ex.D2 to Ex.D4 is misconceived in view of the uncontroverted explanation given by the plaintiff in respect to the said Site Plans Ex.D2 to Ex.D4 in para 3 of the replication (at page 63 of the LCR).

17. Learned counsel for the appellant/defendant No.1 is unable to dispute or controvert the above said facts and findings.

18. Consequently, I do not find any merit in the present appeal and the same is accordingly **dismissed**.

19. Pending applications, if any, stand disposed of.

19.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No