



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-163-2020 (O&M)

Reserved on: 03.03.2025

Pronounced on: 06.03.2025

BALBIR KAUR

... APPELLANT

Vs.

DALJIT KAUR RAI AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sarju Puri, Advocate, for the appellant.

DEEPAK GUPTA, J.

Defendant of the case is before this Court against the concurrent findings of the Courts below in the present Regular Second Appeal.

2.1 Plaintiffs Daljit Kaur and others (*respondents herein*) filed the suit seeking separate possession by way of partition by metes and bounds of their $\frac{1}{2}$ share in the suit property measuring 17 marlas comprised in Khata No.139/1787 Khasra Nos.33//26 situated at Banga, Tehsil Banga, Distt. SBS Nagar. Plaintiffs claimed to be co-sharer in the suit property to the extent of $\frac{1}{2}$ share and sought partition thereof so as to enjoy full fruits of their share.

2.2 Defendant (*appellant herein*) opposed the suit on the ground that she was in exclusive possession over the suit property and that the suit was not maintainable, as suit property is a *taur* of well, which cannot be partitioned.

2.3 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found plaintiffs to be co-owner in the suit property to the extent of $\frac{1}{2}$ share and defendant-appellant to the extent of remaining $\frac{1}{2}$ share. It was further found that though as per Section 112 of the Punjab Land Revenue Act, 1887 [for short 'the Act'] partition of a *well* can be refused in case said partition is likely to cause inconvenience to the co-

sharers and other persons. Trial Court found that nature of property was mentioned as '*Gair Mumkin Taur Chah Gair Jari*', which meant that well was not operational. It was also noticed that as per evidence, earlier there used to be a well in the suit property, but the same was not at all operational and the oral evidence to this effect was supported by documentary evidence. As such, rejecting the stand put forth by the defendant-appellant, preliminary decree was directed to be passed in favour of the plaintiffs for partitioning their $\frac{1}{2}$ share in the suit property vide judgment dated 22.10.2018.

2.4 Appeal filed by the defendant (*Appellant herein*) was dismissed by the Appellate Court on 31.10.2019, thus upholding the findings of the trial Court.

3. Assailing the abovesaid concurrent findings, though learned counsel for the appellant-defendant does not dispute the joint nature of the suit property and the fact that plaintiffs have $\frac{1}{2}$ share therein, but the sole submission made by Id. counsel is that property in dispute was a *Gair Mumkin Chah* i.e. well and so it is impartible in view of Section 112 of the Act. Learned counsel has referred to ***Harbans Kaur Vs. Gurbax Singh and others, 2016 SCC OnLine P&H 11646***.

4. Section 112 of the Act reads as under: -

112. Restriction and limitations on partition: - Notwithstanding anything in the last foregoing section—

(1) places of worship and burial grounds held in common before partition shall continue to be so held after partition, unless the parties otherwise agree among themselves and record their agreement and file it with the Revenue-officer;

(2) partition of any of the following properties, namely:--

(a) any embankment, watercourse, **well** or tank, and any land on which the supply of water to any such work may depend;

(b) any grazing ground; and

(c) any land which is occupied as the site of a town or village and is assessed to land revenue; **may be refused** if, in the opinion of the revenue-officer, the partition of such property is likely to cause inconvenience to the co-shares, or other persons directly or indirectly interested therein, or to diminish the utility thereof to these persons;

XXXXXXXXXXXXXXXXXXXXX”

5. Perusal of the abovesaid provision clearly reveals that as per Section 2(a) of Section 112 of the Act, partition of embankment, watercourse, well or tank or any land on which supply of water to any such work may depend, may be refused if in the opinion of the Revenue Officer, partition of such property is likely to cause inconvenience to the co-sharers or other persons directly or indirectly interested therein or to diminish the utility thereof to those persons.

6. The words ***‘on which the supply of water to any such work may depend’*** suffixing the words ***‘any embankment, watercourse, well or tank or any land’*** would clearly indicate that partition may be refused only in case any such embankment, watercourse, well or tank or any such land is such that supply of water to any such work is dependent. Meaning thereby, partition may be refused in case of a well (as is the present case) , in case the supply of water is dependent through the said well.

7. In the present case, the findings of the Courts below, based upon oral as well as documentary evidence clearly indicate that though in jamabandi for the year 2007-2008, nature of the suit property is *‘Gair Mumkin Taur Chah’*, but it is clearly shown as *‘Gair Mumkin Taur Chah Gair Jari’*, which means that well is not at all operational. There is no cogent evidence on the part of defendant – appellant that partitioning of the suit property was likely to cause any inconvenience to the co-sharers or other persons directly or indirectly interested therein or to diminish the utility thereof to those persons.

8. The documentary evidence in the form of jamabandi to which the presumption of correctness is attached, is further supported by the oral evidence produced by the plaintiff.
9. In the above circumstances, the Courts below have rightly held that there was no bar in partitioning of the said property under Section 112 of the Act.
10. Consequently, this Court does not find any ground to interfere in the concurrent findings of facts recorded by the Courts below. There is no illegality or perversity in the findings. As such, finding no scope for interference, the present appeal is hereby dismissed.

06.03.2025
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes