

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****108****RSA-1040-2020 (O&M)****Reserved on : 23.01.2025****Date of Decision : 06.02.2025**

Balraj Singh and Another

....Appellants

VERSUS

Gurpreet Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Malik, Advocate for
Mr. R.S. Sekhon, Advocate for the appellants.

ALKA SARIN, J.**CM-3390-C-2020**

1. For the reasons stated in the application, the same is allowed.

The delay of 176 days in re-filing the present appeal is condoned.

RSA-1040-2020 (O&M)

2. Present appeal has been preferred by the plaintiff-appellants challenging concurrent findings returned by the Trial Court vide judgement and decree dated 01.05.2017 and by the First Appellate Court vide judgment and decree dated 15.05.2019.

3. The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for possession by way of partition of *gair mumkin* land measuring 03 Kanals 16 Marlas. It was the case set up by the plaintiff-appellants that the total Khewat was of 62 Kanals 10 Marlas and out of that 58 Kanals 14 Marlas was agricultural land and only land falling in Khasra No.498 (3-16) was *gair mumkin abadi*. The suit was contested by defendant-

respondent Nos.1 and 2 who filed their joint written statement stating therein that they have constructed residential houses by spending lakhs of rupees and that their ancestors had orally partitioned the land since long and that defendant-respondent Nos.1 and 2 have been residing in the property in question and have built their houses. Defendant-respondent Nos.6 to 11, 13, 14, 16 and 20(ii) filed their joint written statement by raising legal objections that the family settlement had taken place between the share-holders who had constructed their houses on the land falling in their share. However, they stated that they would have no objection if the vacant land was partitioned. Defendant-respondent No.21, who was impleaded by way of an application under Order I Rule 10 of the Code of Civil Procedure, 1908, stated that the plaintiff-appellants had alienated their entire share in the suit property and as such they have no *locus standi* to seek partition. Qua some portion of the land an agreement to sell dated 08.03.1995 had been entered into whereby they had agreed to sell 14 Marlas 07 Sarsahi of land. It was further averred that on the basis of the agreement to sell the possession had been handed over to defendant-respondent No.21 and he had constructed a residential house on the same land. It was further the case that the remaining land had been sold vide sale deed dated 07.05.2010 in favour of one Kehar Singh son of Hazura Singh. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of possession through partition as prayed for ? OPP
2. Whether the plaintiff is entitled to any other relief, as prayed for ? OPP

3. Whether the suit of the plaintiffs is bad for non-joinder of necessary party ? OPD
4. Whether the suit of the plaintiffs is not properly valued for the purpose of Court fee ? OPD
5. Whether the plaintiffs have no locus-standi to file the present suit ? OPD
6. Whether the suit is not maintainable in the present form ? OPD
7. Whether the oral partition took place between the parties, as prayed for ? OPD
8. Relief.

4. The Trial Court dismissed the suit vide judgement and decree dated 01.05.2017. Aggrieved by the same an appeal was preferred by two of the three plaintiffs which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 15.05.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit. It is urged that no partition had taken place and hence the suit for partition ought to have been decreed. It is further the contention that since there was no partition of the *gair mumkin abadi* reflected in the revenue record, it cannot be said that there was oral partition of the suit property.

6. Heard.

7. In the present case Balraj Singh (plaintiff-appellant No.1) himself stepped into the witness-box as PW-1. Jamabandi (Ex.P1), which was produced by the plaintiff-appellant No.1 himself, reveals that Balraj

Singh and Jeet Singh i.e. plaintiff Nos.1 and 2 before the Trial Court, had sold 07 Marlas of land in favour of Kehar Singh son of Hazura Singh. Plaintiff-appellant No.1 – Balraj Singh – in his cross-examination as PW-1 further admitted that Jeet Singh had also sold 09 Marlas of *gair mumkin* land to Kehar Singh son of Hazura Singh. However, all these material facts were concealed while filing the suit. Further, PW-1 Balraj Singh in his cross-examination admitted that all the co-sharers had constructed houses on their properties and that no protest had been raised by the other co-sharers. In view of the candid admissions, learned counsel for the plaintiff-appellants has not been able to convince this Court that there was no partition which had been affected. Further still, the plaintiff-appellants have not approached this Court with clean hands inasmuch as material facts were concealed by them. Admittedly, Balraj Singh (plaintiff-appellant No.1) and Jeet Singh (plaintiff-proforma respondent No.22) both sold some land to Kehar Singh, though this fact was totally concealed while filing the suit. Jeet Singh (plaintiff-proforma respondent No.22) after passing of the judgment and decree by the Trial Court chose not to file an appeal before the First Appellate Court and has also been impleaded as a proforma respondent herein. A private partition which had been affected between the parties can be affirmed under Section 123 of the Punjab Land Revenue Act, 1887, however, the said affirmation has not been held to be mandatory. Partition privately affected between the parties has to be gathered from the evidence which is available on the file and in the present case there is a clear admission by the plaintiff-appellant No.1 himself regarding the co-sharers being in possession of their shares and having constructed upon the same.

8. In view of the above and in view of the fact that the plaintiff-appellants have not approached the Court with clean hands, no fault can be found with the judgments and decrees passed by both the Courts.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.02.2025
jk

(ALKA SARIN)
JUDGE

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