

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****120****RSA-5991-2019 (O&M)****Date of decision: 26.03.2025****Barita Ram****...Appellant(s)****Vs.****Banso Devi and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Harminder Singh, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff seeking declaration that Agreement of Partition dated 23.12.2010 pertaining to the suit land as described in the head note of the plaint; and mutation no. 3626 entered and sanctioned on the basis of this Agreement of Partition is illegal, null and void; and suit for permanent injunction restraining the defendants from interfering into peaceful possession of the plaintiff and alienating the suit land, has been dismissed by both the Courts below.

2. At the very outset, it may be pointed that the present appeal pertains to the year 2019. Perusal of the order sheets reveals that notice has not yet been issued in the matter as the same has been adjourned either at request of, or due to non-appearance of learned counsel for the appellant since 2019.



3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondents are the 'defendant'.
4. The case as put forth in the plaint is that the plaintiff was the co-sharer to the extent of 11/162 in the suit land measuring 37 kanal 16 marlas; and 1/5th share in the land measuring 8 kanals alongwith defendants in the suit land as per jamabandi for the year 2009-10. The Agreement of Partition is illegal, null and void. Signatures on the Partition Agreement are false. The land is '*Chahi*' in nature. As such, mutation no. 3626 entered and sanctioned on the basis of the said Agreement is also illegal, null and void and the said mutation has been procured by the defendants in connivance with the revenue officials. Further, as the defendants are threatening to dispossess the plaintiff from his share and to alienate and create charge on the suit property, decree of permanent injunction was also sought. Hence, the present suit was filed on 18.03.2013 by the plaintiff through his wife Krishna Devi as his attorney vide General Power of Attorney dated 18.2.2000.
5. Upon notice, defendants appeared and resisted the suit by filing written statement and by submitting that in the month of December 2010, all the defendants alongwith Krishna Devi had mutually agreed to scribe and execute mutual Partition Agreement so that their respective shares may be shown as distinct entity in the revenue record. It was further agreed that so far as possible the actual physical possession of share holders shall not be disturbed. Accordingly, an Agreement of Partition was



drafted on 23.12.2010. After scribing, the contents of it were read over and explained to the parties by defendant No.10. Smt. Krishna wife of plaintiff conveyed that her husband is living abroad and is visiting shortly to his native village. She further requested that let the Agreement be signed by her husband. Her request was acceded to and the execution of said Agreement was mutually kept pending until the arrival of plaintiff Barita Ram, who arrived at village and on 15.02.2011, this Agreement was again read over and explained to the parties by plaintiff Barita Ram and all the parties after understanding and admitting its contents to be correct, signed/thumb marked the same in the presence of attesting witnesses Sh. Kulwant Singh, Namberdar and Smt. Mamta Rani, member panchayat, who also appended their signatures over it. The Agreement was presented before the Halqa Patwari on the same day by the parties, who entered the mutation and forwarded to appropriate authorities for sanctioning the same. Thus, the plaintiff and defendants alongwith other co-sharers become exclusive owner and possessors of their respective khasra numbers as per Agreement. Remaining averments made in the plaint were denied and a prayer to dismiss the suit was made.

6. From the pleadings of parties, following issues were framed vide order dated 13.11.2015:-

"1) Whether plaintiff is entitled to declaration as prayed for?

OPP

2) Whether plaintiff is entitled to permanent injunction as prayed for?OPP

3) Whether suit is not maintainable?OPD



4) *Whether plaintiff has not come to the Court with clean hands and has suppressed material facts, if so, its effect?OPD*

5) *Whether suit is bad for non joinder of necessary parties?*

OPD

6) *Relief.”*

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 to 5 against the plaintiff and in favour of the defendants; and accordingly, vide judgment and decree dated 29.01.2018, the learned trial Court dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was also dismissed with costs by learned District Judge, Pathankot vide judgment and decree dated 09.05.2019. Hence, the present second appeal.

8. Learned counsel for the appellant *inter alia* submits that the learned Courts below are in patent error in non-suiting the plaintiff as the suit land was never partitioned. Admittedly, the original Partition Deed was never produced by the defendants. Only photocopy of the Agreement was attached with the written statement as Mark A. Even no witness was examined by the defendants to prove the Partition deed. However, these facts have not been appreciated by learned courts below.

9. It is submitted that the learned courts below have committed grave error in ignoring that defendant's witness DW1 Maan Singh/defendant No.2 had himself admitted that the land is still joint and that no partition took place through the revenue court and the possession was not delivered physically. It is submitted that accordingly even if Agreement of Partition was entered into, the same was never acted upon



and all co-sharers remained in joint possession. Accordingly, the suit of the plaintiff has been wrongly and illegally dismissed. At least relief of permanent injunction could not have been declined. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees be set aside.

10. I have heard learned counsel for the appellant/plaintiff and perused the case file, as also the lower court records in minute detail.

11. I find no merit whatsoever in the submissions made on behalf of the appellant/plaintiff. A perusal of the record of the case reveals that the plaintiff had previously filed a Civil Suit no. 114 of 2012 titled as ***'Barita ram vs. Maan Singh and another'*** in which the plaintiff had categorically admitted that a partition had taken place between the parties. The previous suit was also filed by the present plaintiff through his wife/GPA holder. Krishna Devi. The said suit was filed seeking decree of mandatory injunction directing the defendants therein to release water of the tubewell to the land of the plaintiff. The Agreement dated 23.12.2010 was placed on record by the plaintiff in the said proceeding as Mark A. Vide judgment and decree dated 19.4.2016 (available at page 261 till 277 of the LCR), the said suit of the plaintiff was partly decreed; thereby restraining the defendants therein from blocking or closing of the passage in dispute except in due course of law. In the said judgment it is recorded that *"An agreement was executed between the parties regarding the tubewell. It has also been alleged that as per the agreement, the water will flow regularly and no body is to stop water and no co sharer is to*



obstruct the gair mumkin passage.....” In para 11 of the said judgment, it is further recorded that Krishna Devi had “*also admitted that the land of the parties has been partitioned in the year 2010 and parties are in possession of their respective shares after partition.*” From the above facts, it is crystal clear that the plaintiff had admitted in the previous suit regarding the Agreement of Partition between the parties.

12. Learned counsel for the appellant has been unable to dispute or deny the above said facts. It is established position in law that **admission is the best evidence**. From the above facts, it is also clear that in the present suit the plaintiff has sought to take a totally contradictory stand by denying the Partition executed between the parties. Although, it has been repeatedly submitted by learned counsel for the appellant that the previous suit was for different cause of action *in-as-much* as the dispute therein pertained to tubewell. However, it is not denied by learned counsel that the Agreement of Partition has been admitted by the plaintiff in previous suit. Reference can be made to a judgment of the Hon’ble Supreme Court in “***Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary***” **Law Finder Doc Id # 83537**; wherein it is 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.

13. Further, even in the present suit, PW1 Mohan Singh in his cross-examination has admitted that “*the parties are in possession of their respective shares as per the latest jamabandi of the suit land and parties*



to the suit have amicably partitioned their land.” All the defendants’ witnesses have supported the statement of defendant No. 2 Maan Singh DW1, who had deposed that suit land has already been partitioned by way of partition. Although, no partition took place through revenue court, however, the said partition was acted upon and was incorporated by the Patwari in the revenue record. The Agreement was written by the Patwari in the house of DW2 Ajit Kumar in the village and was witness to the said Agreement. The said Agreement was signed by all the co-sharers including the plaintiff.

14. DW3 Rajesh Kumar Halqa Patwari duly proved copy of mutation entry Register Ex.DW3/1. DW3 deposed that mutation was entered in the presence of all the parties. The original Agreement was stated to have been deposited with the record office of Daftar Kanungo at Tehsil Pathankot and he did not have a copy thereof.

15. DW4 Sukhjinder Singh Sarpanch of the village also deposed in his cross-examination that partition had been done on the basis of mutual Agreement of Partition duly approved by Tehsildar Pathankot and that the Agreement was scribed while sitting in the haveli of Maan Singh. Even no handwriting expert was produced by the plaintiff to disprove his signatures borne on the Agreement dated 23.12.2010.

16. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.



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

26.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No