

Hari Singh Vs. Mann Singh

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Court : Punjab and Haryana

Decided On : Jan-04-2006

Reported in : (2006)143PLR402

Judge : Satish Kumar Mittal, J.

Acts : [Punjab Land Revenue Act, 1887](#) - Sections 158(2)

Appeal No. : Regular Second Appeal No. 1781 of 1980

Appellant : Hari Singh

Respondent : Mann Singh

Advocate for Def. : Rajesh Garg, Adv.

Advocate for Pet/Ap. : Ashok Jindal, Adv.

Disposition : Appeal dismissed

Judgement :

Satish Kumar Mittal, J.

1. This Regular Appeal has been field by the plaintiff against the judgment of reversal passed by Additional District Judge, Karnal.

2. On 12.2.1975, appellant Hari Singh filed the present suit for declaration to the effect that the order dated 17.9.1973 passed by Tehsildar, Kaithal, partitioning the land in question under the provisions of the Punjab Land Revenue Act (hereinafter referred to as 'the Act') was illegal, without jurisdiction and null and void. Further declaration was sought that the impugned order was based upon misrepresentation of facts. The appellant also prayed for possession of the land in question.

3. In the plaint, it has been alleged by the plaintiff that he had purchased 16 Kanals of land vide registered sale deed dated 28.5.1963 from Devi Dial (defendant No. 1), who was a co-sharer in Khewat No. 250, which was comprising 558 Kanals 3 Marias of land, and the possession of the land purchased was delivered to the plaintiff. Thus, he became owner in possession of the said land. It has been further alleged that subsequently, one of the co-sharers, namely Hari Singh son of Datu (defendant No. 3) filed an application for partition before the revenue Court under the provisions of the Act. In those partition proceedings, the plaintiff was illegally proceeded ex parte, even though he was not properly served. Subsequently, in the order of final partition dated 17.9.1973, Killa No. 1/1 out of the land purchased by the plaintiff was allotted to said defendant No. 3. The order of final partition was challenged in the suit on the grounds that no notice according to law was served upon the plaintiff and the procedure followed by the revenue Court was unknown to law, therefore, the order dated 27.2.1969, vide which the appellant was proceeded ex parte and the final order of partition dated 17.9.1993 are null and void.

4. The suit was contested by defendants No. 2, 3 and 8, it was pleaded that the land purchased by the plaintiff from a co-sharer was part of Khewat No. 250 which was comprising 581 Kanals 1 Maria of land. No specific possession was delivered by defendant No. 1 to the plaintiff nor it could have been delivered as defendant No. 1 was not in possession of any specific killa number. He was only a joint owner and was not competent to transfer the specific killa number of the joint khewat. Regarding partition, it was stated that the partition application filed by defendant No. 3 was legally decided, due notice was served upon the petitioner and when he refused to accept service including the substituted service, he did not

appear, he was proceeded ex parte. Ultimately, the final order of partition was passed by the revenue Court, which has the jurisdiction under the Act. It is further contended that the jurisdiction of the Civil Court is barred under Section 158(2) of the Act.

5. On the pleadings of the parties, seven issues were framed, including the issues of maintainability of the suit and limitation.

6. Though the trial Court decreed the suit, while holding that no proper notice was issued to the plaintiff in the partition proceedings, therefore, the order of proceeding against him ex parte as well as the final order of partition are null and void. Regarding jurisdiction of the civil Court, it was held that since the final order of partition has been found to be null and void, therefore, the Civil Court has the jurisdiction to set aside such an order. Regarding limitation, it was held that since the suit was filed within three years of the passing of final order of partition, therefore, the same was within limitation.

7. On appeal, the judgment and decree passed by the trial Court has been set aside and suit of the plaintiff has been dismissed. It has been held that proper notice was issued to the plaintiff by the revenue Court, which he has refused to accept. Thereafter, a proclamation was issued, but inspite of the proclamation, the plaintiff did not appear in the partition proceedings and he was rightly proceeded ex pane and the matter was finally adjudicated by the revenue Court, which has the jurisdiction to order partition of the joint land under the Act. It has been further held that in view of Section 158(2) of the Act, Civil court has no jurisdiction to set aside the order of partition passed under the Act. Regarding limitation, it has been held that the period of limitation would be one year from the date when the impugned order was passed and not three years, because the impugned order was not a null and void order and if such an order is to be challenged on the ground of some illegality, a suit has to be Pled within one year from the date of knowledge. Since the instant suit was not filed within that period, therefore, it was held to be barred by limitation. Hence this appeal.

8. I have heard the arguments of learned Counsel for the parties.

9. Though learned Counsel for the appellant has not formulated any substantial question of law arising in this appeal, but he has submitted that the finding recorded by the first appellate Court regarding the proper service of notice upon the plaintiff is totally perverse and contrary to the evidence on record. He further submitted that the final order of partition was passed by the revenue Court on the basis of a compromise, but the said compromise was not signed by all the co-sharers, therefore, the final order of partition is null and void and without jurisdiction.

10. I have considered both the aforesaid submissions made by learned Counsel for the appellant and do not find any substance in the same. Certified copy of the notice issued to the appellant in the partition proceedings is available on record as Ex.P-5. It was addressed to the plaintiff and other co-sharers, who were party in the partition proceedings. It contains report of the Patwari regarding service to the effect that except three co-sharers, namely Amini Lal, Hari Singh and Nafe Singh, all the other co-sharers have been served. Regarding the plaintiff, it has been reported that he refused to put his signatures. Ex.P-4 is the certified copy of the order dated 27.2.1969, vide which the plaintiff was proceeded ex parte,. Ex.D-2 is the certified copy of the proclamation which was issued on 20.10.1969. This proclamation was issued for the co-sharers, including the plaintiff, but in spite of the proclamation, the plaintiff did not appear and vide order dated, 5.10.1970, certified copy of which is available on record as Ex.D-1, ex parte proceedings were ordered against all those co-sharers who did not appear either in person or through their counsel. Thereafter, the final order was passed on 19.4.1971, which was challenged by some of the co-sharers by filing the appeal. The appeal was allowed on the basis of compromise and the matter was remanded to the Tehsildar for partition of the property in accordance with the terms of compromise. Thereafter, the final order of partition was passed on 17.9.1973. The first appellate Court took into consideration all these facts and provisions of the Acts as well as statement of the plaintiff as PW-2 and recorded a finding of fact that the service was duly effected on the plaintiff and when he refused to accept the notice and did not appear in spite of the proclamation, he was rightly proceeded ex parte. I do not find any perversity or illegality in the said finding of fact. In view of the said finding, the first appellate Court has rightly held that the order of partition passed by the

revenue Court was neither without jurisdiction nor it was void. It had also been rightly held that jurisdiction of the Civil Court to set aside such an order is barred under Section 158(2) of the Act. Regarding partition of the joint land in accordance with the terms of the compromise effected between co-sharers, it has been rightly held that the revenue Court has the jurisdiction to order partition in terms of the compromise between the co-sharers. This aspect has been considered by the appellate Court in para 30 of the impugned judgment. I also do not find any illegality in the said finding.

11. In this appeal, neither any substantial question of law is involved nor any such question has been formulated and argued by learned Counsel for the appellant.

12. In view of the aforesaid, there is no merit in this appeal and the same is, accordingly, dismissed.

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