

Balwinder Singh and ors. Vs. Prem Singh and ors.

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Court : Punjab and Haryana

Decided On : Nov-22-2005

Reported in : (2006)142PLR716

Judge : Viney Mittal, J.

Appeal No. : Regular Second Appeal No. 1544 of 1988

Appellant : Balwinder Singh and ors.

Respondent : Prem Singh and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : V.K. Jain, Sr. Adv. and; Divya Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Viney Mittal, J.

1. The defendants having remained concurrently unsuccessful before both the Courts below have approached this Court through the present Regular Second Appeal.

2. The plaintiffs filed a suit for declaration to the effect that they along with the defendants are joint owners in equal shares with regard to the land in dispute. The

details of the shares of the plaintiffs as well as the defendants were mentioned in the plaint. It was further claimed that the plaintiffs were entitled to get their half share separated by way of partition, by the revenue authorities and the order of Tehsildar, Zira exercising the powers of Assistant Collector, 1 Class dated April 26, 1984 holding that the land of the parties were partitioned, was illegal and void.

3. The defendants contested the suit. They claimed that the land in question had already been partitioned between the parties through a private partition and that the plaintiff as well as the defendants were in exclusive possession of their separate lands. It was further claimed that the defendants spent more than Rs. 50,000/- on the improvement of land under their possession and therefore, they were also entitled to the aforesaid amount.

4. The learned trial Court on the basis of the revenue record and other evidence available on the record found that the defendants had failed to substantiate their plea that there had been a private partition between the parties. It was held that the land had remained joint between the parties and, accordingly, the plaintiffs were entitled to seek partition. Consequently, the plaintiffs were declared to be co-sharers of the suit land along with the defendants and it was held that they were entitled to get the partition of the suit land in accordance with their share. The order of Assistant Collector 1 Class dated April 26, 1984 holding that the land of the parties had been privately partitioned was consequently declared to be illegal and void. The learned trial Court, however, found that at the time of partition, the plaintiffs would pay an amount of Rs. 50,000/- as compensation to the defendants.

5. The defendants took up the matter in appeal before the learned first Appellate Court. Even the plaintiffs filed an appeal with regard to the compensation awarded in favour of the defendants.

6. Both the appeals were decided together by the learned Additional District Judge, Learned Additional District Judge while considering the matter, reexamined the entire matter and the material available on the record and found that there was no material available on the record either in the shape of documentary evidence or revenue record to support the plea of the defendants that any partition had taken place between the parties with regard to the suit land. Consequently, the finding

recorded by the learned trial Court that the land had remained joint between the parties, was upheld. However, the learned first appellate Court allowed the appeal filed by the plaintiffs by holding that there was no justification for the defendants to claim Rs. 50,000/- for the alleged improvement. It was held that since the land had remained joint between the parties and it could not be ascertained which portion of the suit land is to come in partition to which party, it was not justified to order the plaintiffs to pay the aforesaid amount. Consequently, the appeal filed by the plaintiffs was allowed and the appeal filed by the defendants was dismissed.

7. The defendants have now chosen to file the present regular second appeal.

8. I have heard Shri V.K. Jain, learned senior counsel appearing for the defendants-appellants and with his assistance have also gone through, the record of the case.

9. Shri Jain, learned Counsel for the appellants has argued that the evidence on the record clearly depicted that the parties had remained separate in residence and mess and were in exclusive possession of their separate lands. On that basis, it has been argued by the learned Counsel that an inference could be drawn that there was a private partition between the parties and therefore, the claim of the plaintiffs for declaration and partition was wholly unsustainable.

10. I have given my thoughtful consideration to the aforesaid contention of the learned Counsel for the appellants but find myself unable to agree with the same.

11. Both the Courts below have concurrently found it as a fact that revenue record ever depicted that there was any private partition with regard to the suit property. As a matter of facts, the revenue record clearly shows that the parties were co-sharers in the suit land and were in joint possession thereof. In these circumstances the mere fact that the parties, resided separately cannot lead to an inference that any partition had taken place between the parties. It is well settled law that a private partition between the parties can only be taken into consideration and can be held to be binding only if the same is duly reflected in the revenue record. Admittedly, no such partition had been reflected in the revenue record. Consequently, the findings recorded by the courts below cannot be held to

be erroneous in any manner.

12. Nothing has been pointed out by the learned Counsel for the appellant that the findings of fact recorded by the courts below suffer from any infirmity or are contrary to the record.

13. No question of law, much less any substantial question of law, arises in the present appeal.

14. In view of the aforesaid discussion, I do not find any merit in the present appeal and the same is dismissed.

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