

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**RSA No. 4010 of 2008
Date of Decision: 31.01.2011.**

Mam Chand

.....Appellant

Vs.

Smt. Bhago Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.K.Jain, Advocate
for the appellant.

Mr. P.K.Ganga, Advocate
for the respondents.

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SABINA, J.

Plaintiff Mam Chand had filed a suit for declaration that he was the joint owner in possession of the suit land.

The case of the plaintiff in brief was that Sahi Ram- defendant No.1 (since deceased) and Het Ram-defendant No.6 were real brothers. Plaintiff owned 58 Kanals 5 Marlas of land, whereas Sahi Ram, deceased owned 50 Kanals 4 Marlas and Het Ram owned 38 Kanals 3 Marlas of land in both the Khewats. In addition to this, the plaintiff also owned 3 Kanals 16 Marlas of land in joint khewat No. 531 and had further purchased 3 Kanals 7 Marlas of land from Kamla Devi on 11.5.1994 vide registered sale deed. Thus, in all, the plaintiff had become joint owner and in possession to the extent of 65 Kanals 8 Marlas of land. Sahi Ram, deceased had transferred

his share in favour of his wife and two sons vide civil court decree dated 25.9.1993 and had retained only 7 Kanals of land with him, out of his total land measuring 50 Kanals 4 Marlas. On 8.7.1993, Karnail Singh and his wife moved an application for partition of their share out of the joint khewats. The said application was allowed vide order dated 31.5.1996. The suit land, owned and possessed by the parties, was however kept joint. During preparation of the partition proceedings, the shares held by the parties in the suit land, were not correctly recorded in Naksha 'BE'. The plaintiff had been given less land to the extent of 6 Kanals 2 Marlas, whereas defendant No.1 to 5 had been given 6 Kanals 2 Marlas of land in excess of their actual shares. Hence, the mutation qua partition bearing No. 3809 had not been correctly sanctioned, qua the shares of the parties. On coming to know about the mistake, plaintiff along with defendant No. 6 moved an application before Assistant Collector II Grade, Sirsa for correction of the revenue record. The said application was declined vide order dated 22.3.2000 on the technical grounds that the mutation had been implemented in the jamabandi for the year 1995-96. Hence, the suit was filed by the plaintiff.

Defendants No. 1 to 5, in their written statement, have averred that the plaintiff had concealed the material facts. Vide order dated 31.5.1996, the Assistant Collector Ist Grade had ordered the preparation of the Naksha-BE in the partition proceedings. After completion of all formalities including Naksha-zeem, mutation No. 3809 was sanctioned. The partition proceedings stood finalized vide order dated 31.5.1996.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is liable to the declaration as sought? OPP
2. Whether the plaintiff is entitled to consequential relief of permanent injunction, as prayed for? OPP
3. Whether the plaintiff is also entitled for possession if any, as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the Civil Court has o jurisdiction to entertain the present suit? OPD
6. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
7. Whether the plaintiff has no cause of action to file the present suit? OPD
8. Whether the plaintiff has estopped by their own act and conduct to file the present suit? OPD
9. Relief.”

Vide judgment and decree dated 02.12.2005, the trial court dismissed the suit of the plaintiff. Aggrieved by the said judgment and decree, the plaintiff preferred an appeal and the same was dismissed by the Additional District Judge, Fast Tract Court, Sirsa vide judgment and decree dated 02.5.2008. Hence, the present appeal by the plaintiff.

Learned counsel for the appellant has submitted that by way of present suit, plaintiff had sought correction of the

entries in the jamabandi and civil suit filed by the plaintiff was maintainable. In support of his arguments, learned counsel for the appellant has placed reliance on '**Sat Parkash alias Satpal Vs. The Financial Commissioner, Revenue, Punjab & others'** **2010(1) Civil Court Cases 082**, '**Tarlok Singh Vs. Financial Commissioner Co-operation, Punjab, Chandigarh and others'** **2004 LAR 618** and '**Gopal Singh (died) through his Lrs. Vs. Punjab State' 1992 (2) Recent Revenue Reports 45.**

Learned counsel for the respondents, on the other hand has submitted that the suit filed by the plaintiff was not maintainable as jurisdiction of the civil court was barred under Section 158 of the Punjab Land Revenue Act 1887.

After hearing the learned counsel for the parties, I am of the opinion that the instant appeal deserves dismissal.

Section 158 of the Punjab Land Revenue Act, 1887 reads as under:-

“Exclusion of Jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers.- Except as otherwise provided by this Act-

- (1) A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act to dispose of or take cognizance of the manner in which the State Government or any Revenue-officer exercises any powers vested in it or him by or under this Act; and in particular-*
- (2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:-*

x x x x x x

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought:

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land-revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of rent on the partition of a tenancy.”

Admittedly, the partition proceedings had concluded in this case. Mutation No. 3809 was sanctioned in terms of the partition proceedings. Although, learned counsel for the appellant has submitted that the plaintiff was merely seeking correction of the entries in the jamabandi but by way of the civil suit, the plaintiff was in fact challenging the mutation sanctioned on the basis of the partition proceedings. It is not the case of the plaintiff that mutation was not sanctioned as per the order of partition. In these circumstances, both the courts below had rightly held that the civil court had no jurisdiction to entertain the present suit. In case the plaintiff had any grouse qua the partition proceedings, he could have resorted to the remedy available before the Revenue Court. The judgments relied upon

by the learned counsel for the appellant fail to advance the case of the appellant as these are based on different facts. No substantial question of law arises in this case.

Dismissed.

**(SABINA)
JUDGE**

January 31, 2011
Gurpreet