**(1993) 05 P&H CK 0089**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 2441 of 1989

Raj Kumar APPELLANT

Vs

Hardit Singh (Deceased) represented by his LRs RESPONDENT

**Date of Decision :** 10-05-1993

**Acts Referred:**
Punjab Municipal Act, 1911 — Section 63, 64

**Citation :** (1995) 105 PLR 364 : (1993) 105 PLR 364

**Hon'ble Judges :** N.K. Kapoor, J

**Bench :** Single Bench

**Advocate :** R.K. Battas, for the Appellant; L.N. Verma, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.K. Kapoor, J.—This is defendants'' appeal against the judgment of the Courts below whereby the suit filed by the plaintiffs was decreed and appeal therefrom was dismissed by the Additional District Judge.

The plaintiffs filed a suit for partition of the land claiming it to be Joint Hindu family property of Gurdit Singh etc. in which the share of the plaintiffs was 1/2 whereas the remaining 1/2 share was owned by Gurdit Singh etc. who sold the same to the defendants.

2. The defendants put in appearance, filed written statement. It was pleaded by the defendant that the property was already partitioned between the plaintiff and Gurdit Singh from whom the defendants purchased and so the defendants are exclusive owners in possession of the land purchased by them. The defendants raised additional objections regarding cause of action, maintainability of the suit, estoppel, proper court fee etc.

3. On the pleadings of the parties, following issues were framed :-

1. Whether the property in dispute was the joint Hindu property of the plaintiffs and Gurdit Singh etc. and is liable to be partitioned as alleged ? OPP.

 

2. Whether the plaintiffs are estopped by their act and conduct from filing the present suit ? OPD.

3. Whether the plaintiffs have no cause of action to file the present suit ? OPD.

4. Whether the plaintiffs have no locus standi to file the present suit ? OPD.

5. Whether the suit is not maintainable in the present form ? OPD.

6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction ? OPD.

7. Whether the suit property has already been partitioned between plaintiffs and Gurdit Singh etc....if so, its effect ? OPD.

8. Whether the defendants are entitled to special costs u/s 35A of CPC ? OPD.

9. Relief.

The trial Court decided issued Nos. 1 and 7 in favour of the plaintiffs and against the defendants. Issue No. 2, 4 and 5 were decided against the defendants. Resultantly the suit of the plaintiffs was decreed holding that they have 1/2 share in the suit property.

4. Before the lower appellate Court, the matter was once again examined on facts and law. The learned counsel for the appellants mainly relied upon Exhibit D-3 a bahi entry and thus urged that it is amply proved on record that partition between the parties had already taken place, this document has been wrongly ignored by the trial Court. Not only this, entries in the municipal register for the assessment of the house tax clearly prove the assertion of the appellants that the suit property already stands partitioned. On these premises it was urged that decision of the trial Court in respect of issue Nos. 1 and 2 is liable to be reversed. The lower appellate Court examined this matter minutely and came to the conclusion that bahi entry Exhibit D-3 has not been proved according to law. Shiv Dev Singh DW7, who has produced this bahi entry, is not a witness to this document. All that he states is that he got this bahi from his father Sumer Singh. The lower appellate Court observed that no other witness has been examined to prove this writing in the bahi. Referring to the entries in the assessment register of the Municipal Committee, the Court held that the same cannot be construed as document of title nor such entries could be preferred vis-a-vis revenue record wherein plaintiffs as well as Gurdit Singh etc. continue to be recorded as owner in equal shares. The lower appellate Court thus concluded that there is no reliable evidence to partition the suit property. The findings on issue Nos. 1 and 7 were thus affirmed. Resuitantly, the appeal was dismissed.

5. The first submission of the learned counsel for the appellants is that the Courts below have erred in law in ignoring the bahi entry Exhibit D-3 by erroneously observing that the attesting witness of the bahi entry has not been examined. In fact, Surja Ram has appeared as a witness and has admitted his signatures on the bahi entry Exhibit D-3. Not only this Shiv Dev Singh DW7, too

have deposed supporting the case of the defendant. On this short ground alone the impugned judgments of the Courts below are liable to be reversed. He further argued that bahi has come from a proper custody and the factum of partition between Asa Singh Kanshi Ram was reduced into writing Exhibit D-3 dated 2.12.1956. Subsequent entries in the house tax assessment register of Municipal Committee record plaintiffs and Gurdit Singh and others in exclusive possession over the area which has fallen to their respective share as per memorandum of partition. This being the position, the suit filed by the plaintiffs is wholly misconceived and the decree passed by the trial Court and affirmed in appeal is unsustainable in law.

6. To seek reversal of the judgments of the Courts below the appellants trumpcard is the document Exhibit D-3. On the basis of this document the counsel urges that there had been a partition between Asa Singh and Kanshi Ram precedecessor-in-interest of the parties, subsequently reduced in writing dated 2.12.1956, Exhibit D-3. This document, indeed, makes an interesting reading. All that it records is the names of Asa Singh Kanshi Ram and signatories to this document, namely, Hari Singh, Kikar Singh and Surya Ram. The factum of partition of the shop is proved by drawing a pencil line in between the name of Asa Singh and Kanshi Ram. The other writing is admittedly in ink. Both the Courts after carefully examining the document did not place reliance upon the same as no attempt was made by the defendants to prove the same. A bare perusal of the statement of Surja Ram reveals that no such document was put to him when he was examined in Court on 12.2.1988. For this very reason, Surja Ram refers to his alleged signatures on mark A a photo copy of the document Ex-document on record, admittedly has been examined by the Court on 10.6.1988. Shiv Dev Singh is not a signatory to this document. The only other attesting witness of this document is Kikar Singh who for reasons best known to the party has not been examined. The Courts below thus rightly came to the conclusion that the document Exhibit D-3 has not been properly proved. Even otherwise this document appears to be of doubtful origin. This pocket bahi does not make mention as to when it began, this entry, admittedly, has not been entered in any revenue record prepared subsequently. On the contrary, in the revenue record the parties continue to be recorded as co-owners of the suit property. I thus find no substance in this contention of the appellants.

7. The next submission of the learned counsel that pursuance to this partition he partly remained in exclusive possession which fact is duly recorded in the assessment register as well is also without any substance. Entry in the assessment register is not a document of title. This is essentially prepared by the Municipal Committee to recover house tax from the owner/occupier. Thus, even if one of the party is recorded to be in the column of owner/occupier, the same does not preclude a party having title in the property, to assail its correctness. The defendants admittedly have become owners of the part of the suit property on the basis of sale deed dated 17.2.1984 Exhibit D-1 and D-2. A bare perusal of the deeds also reveal that the vendors sold 2/5th share of 168 Kanals 8 marlas

 

of the land vide Exhibit D-1 and 1/8th share of 168 Kanals 8 Marias vide Exhibit D-2 i.e. to say that vide both these sale deeds the vendees purchased a share of the joint property. This narration in the sale deeds also belie the contention of the appellants that their predecessor-in-interest had partitioned the joint holding way back in the year 1956.

No other point has been claimed or pressed.

The appeal is wholly devoid of merit and is consequently dismissed with costs. Costs assessed at Rs. 1000/-.

 