

PBBTB00006712016



Presented on : 17-10-2016
Registered on : 17-10-2016
Decided on : 20-01-2023
Duration : 6 years, 3 months, 3 days

**IN THE COURT OF
Additional Civil Judge (Senior Division) AT Phul, Bathinda
Presided Over by Meenakshi Gupta
(UID No. PB0369)**

CS/428/2016

1. Gurmail Kaur widow of Gurdial Singh @ Hardial Singh son of Inder Singh,
 2. Nirmal Singh son of Gurdial Singh @ Hardial Singh son of Inder Singh,
 3. Jasvir Singh son of Gurdial Singh @ Hardial Singh son of Inder Singh,
- All residents of Village Peerkot, Tehsil Phul, District Bathinda.

.....Plaintiffs

VERSUS

1. Karamjit Singh son of Gurnam Singh son of Mastan Singh,
 2. Bhola Singh son of Gurnam Singh son of Mastan Singh,
 3. Mander Singh son of Jaggar Singh son of Kishan Singh,
- All residents of Village Peerkot, Tehsil Phul, District Bathinda.
4. Gurmail Singh son of Jaggar Singh son of Kishan Singh resident of Village Peerkot, Tehsil Phul, District Bathinda, now resident of Arab Ship Building and Repair Yard (ASRY) Company Bahirin.
 5. Sikander Singh son of Jaggar Singh son of Kishan Singh,
 6. Balwinder Singh son of Maggar Singh son of Kishan Singh,
- All residents of Village Peerkot, Tehsil Phul, District Bathinda.
7. Naginder Singh son of Maggar Singh son of Kishan Singh, resident of Village Peerkot, Tehsil Phul, District Bathinda, now resident of Arab Ship Building and Repair Yard (ASRY) Company Bahirin.
 8. Sukhwinder Singh son of Maggar Singh son of Kishan Singh,
 9. Maggar Singh son of Kishan Singh son of Deva Singh,
 10. Jaggar Singh son of Kishan Singh son of Deva Singh,
- All residents of Village Peerkot, Tehsil Phul, District Bathinda.

11. Harjinder Kaur @ Rani wife of Baljeet Singh son of Sher Singh, resident of Village Burj Dillwa, Tehsil and District Mansa.
12. Beebo Rani wife of Chanan Ram son of Laddu Ram,
13. Mitha Ram son of Laddu Ram son of Nikka,
14. Bawa Ram son of Ram Dass son of Karnail Ram,
All residents of Village Peerkot, Tehsil Phul, District Bathinda.
15. Balkaran Singh son of Jora Singh son of Budh Singh,
16. Mall Singh son of Karam Singh son of Jai Singh,
Both residents of Village Burj Dillwa, Tehsil and District Mansa.
18. Darshan Ram son of Ram son of Sardara Ram, resident of Village Peerkot, Tehsil Phul, District Bathinda.
19. Paramjit Singh son of Kartar Singh,
20. Ranjit Singh son of Kartar Singh,
21. Makhan Ram son of Buta Ram son of Pillu,
22. Gurmeet Singh son of Sukhdev Singh son of Amar Singh,
23. Buta Singh son of Sukhdev Singh son of Amar Singh,
24. Bhag Singh son of Dan Singh son of Kallu Singh,
All residents of Peerkot, District Bathinda.
25. Pallo wife of Hans Ram son of Sikander Ram,
26. Kartaro wife of Naib Ram son of Ram Dass,
27. Nazro wife of Darshan Ram son of Sohna Ram,
28. Channa Ram son of Laddu Ram son of Nikka Ram,
29. Bhola Ram son of Laddu Ram son of Nikka Ram,
30. Sikander Ram son of Mahinga Ram son of Moti Ram,
All residents of Village Peerkot, Tehsil Phul, District Bathinda.
31. The Bathinda Central Cooperative Bank, Bathinda, Branch Peerkot, through its Bank Manager.
32. Central Cooperative Bank, Branch Peerkot through its Bank Manager.
33. HDFC Bank, Branch Mansa through its Bank Manager.
34. State Bank of Patiala, Branch Chauke, through its Bank Manager.
35. The Rampura Phul Primary Agricultural Development Bank, Branch Rampura Phul, through its Bank Manager.
36. AC First Grade (Naib Tehsildar) Balianwali, through its Bank Manager.
37. Balwinder Singh Kanugo Halqa, Peerkot, Sub Tehsil Balianwali, District Bathinda.
38. Tarsem Lal, Patwari Halqa Peerkot, Sub Tehsil Balianwali, District Bathinda.

.....Defendants.

Suit for Declaration & Permanent Injunction.

Present: Sh. VK Garg, Advocate counsel for the plaintiffs.
Sh. JC Sharma, Advocate counsel for defendants no. 1, 2, 3, 12, 13, 14, 17,18, 21, 24 to 28 and 34.
Sh. Navjeet Singh, Advocate counsel for defendants no. 1.
Sh. Romy Bansal, Advocate counsel for defendant no. 38.
Sh. Ishan Goyal, Advocate counsel for defendants no. 19, 20, 22 and 23 (defence struck off).
Defendant no. 30 dead.
Defendants no. 4, 5, 6, 7, 8, 9, 10, 11, 15 and 16, 25, 29, 31, 32, 33, 35, 36 and 37 exparte.

JUDGMENT:-

1. The Plaintiffs have filed the present suit for declaration and permanent injunction as detailed and described in the head note of the plaint.
2. Brief facts as put forth by the plaintiffs are that the plaintiffs are owners in possession of land measuring 257 kanal 0 marlas as per jamabandi for the year 2011-12 situated at village Peerkot, Sub Tehsil Balianwali, District Bathinda (hereinafter referred to as suit property). Gurdial Singh @ Hardial Singh was owner in possession of the suit land being co-owner. He got land measuring 89 Kanal 5 Marlas through family partition and was owner in continuous possession of the said land. Thereafter, after the family partition, defendants Bhola Singh, Karamjit Singh, Maghar Singh, Jaggar Singh and other persons had filed an application before Tehsildar for partition of the said land, which was challenged by Gurdial Singh @ Hardial Singh in the Court and vide judgment and decree dated 07.09.2000, the then Learned Civil Judge (Junior Division), Phul declared the same as null and void and Gurdial

Singh @ Hardial Singh was held to be owner in possession of land measuring 89 kanals 5 marlas. Since then Gurdail Singh @ Hardial Singh is owner in possession of the said land. Gurdial Singh @ Hardial Singh has died on 08.09.2004, who had executed a Will in favour of plaintiffs during his life time. Now, plaintiffs are owners in possession of the suit property. The appeal filed by the defendants against the judgment and decree in favour of Gurdial Singh @ Hardial Singh, was also dismissed. Thereafter, the defendants filed CWP before the Hon'ble Punjab & Haryana High Court, Chandigarh, which was also dismissed vide order dated 13.07.2015. In view of the said judgment, the plaintiffs are owners in possession of suit property measuring 89 kanal 5 marlas. The plaintiffs have sold some share out of suit property and they are owners in possession of the remaining land. The revenue officials in connivance with each other did not make entry of judgment and decree dated 07.09.2000 and defendants No.1 to 10 are having knowledge about this fact. Now, defendants No.1 to 10 by taking advantage of said wrong facts, have filed a partition application bearing No.299/Reader dated 28.01.2016, which has been decided on 02.05.2016. The said application has been filed by defendants No.1 to 10 to grab the property of plaintiffs and to harass the plaintiffs. Defendants No.1 to 10 when filed application for partition before Naib Tehsildar, Balianwali, had given wrong addresses of the plaintiffs as residents of village Ubha, Tehsil and District Mansa, in order to cause loss to the plaintiffs. However, the plaintiffs are permanent residents of village Peerkot and they have no relation with

village Ubha. As such, the said partition proceedings are liable to be set aside. The defendants No.1 to 10 had also given wrong addresses of defendants No. 5 to 11 by showing them residents of village Nagpur, District Fatehabad and addresses of defendants No.18 to 23 have also been given wrong by showing them residents of Ghuman Kalan, Tehsil Maur, District Bathinda. The defendants No.1 to 10 filed wrong addresses of the plaintiffs and other defendants intentionally in the partition application. The plaintiffs came to know about the forged and fabricated partition proceedings when Halqa Kanungo came to their field along with warrant of possession. However, with the timely intervention of the plaintiffs, the revenue officials have left the suit property. The defendants No.1 to 10 in connivance with defendants No.36, 37, 38 claim that they will interfere into the possession of the plaintiffs over the suit land. The plaintiffs requested the defendants No.1 to 10 to admit their claim, but to no effect. In case defendants No.1 to 10 succeed in their evil design, the plaintiffs shall suffer an irreparable loss, which cannot be compensated later on and there would be multiplicity of litigation between the parties to the suit. Hence the present suit.

3. Upon notice, the defendants No.1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 14, 17, 18, 21, 24 to 28, 31, 32, 34, 38 appeared and filed their separate written statements. Defendants No.1, 2, 12, 13, 14, 17, 18, 21, 24 to 28 in their written statements took preliminary objections regarding non-joinder of necessary parties, non serving of notice u/s 80 CPC, maintainability, locus standi and cause of action, jurisdiction of this Court, act and

conduct, concealment of facts, proper Court fee and jurisdiction of this Court. **On merits**, defendants No. 1, 2, 12, 13, 14, 17, 18, 21, 24 to 28 submitted that the plaintiffs have themselves stated that they are co-owners in the land measuring 257 kanals and as such, the defendants No.1 to 10 were fully competent to get the suit land partitioned as per their share as recorded in the jamabandi. The joint khata has already been partitioned amongst the co-sharers and partition proceedings have already become final and as such khata is no more joint. No family partition ever took place between the parties to the suit. So there is no question of allotment of land measuring 89 kanal 5 marlas to Gurdial Singh @ Hardial Singh and the Court of A.C. Ist Grade-cum-Naib Tehsildar, Balianwali had rightly decided the partition application filed by defendants No.1 to 10 against Gurdial Singh @ Hardial Singh etc. The then Court of Civil Judge (Junior Division), Phul decided the suit of Gurdial Singh @ Hardial Singh on the presumption of wrong facts and he was never in possession of land measuring 89 kanal 5 marlas but he was in possession of land as per his share as recorded in the jamabandi. Gurdial Singh @ Hardial Singh never executed any Will in favour of the plaintiffs. The alleged Will is a false, forged and fabricated document and the plaintiffs have no right in the suit property on the basis of alleged Will. The revenue authorities have decided the partition application bearing file No.29911/Reader decided on 02.05.2016 correctly and legally as the matter falls under the jurisdiction of the same authorities under Punjab Land Revenue Act and the same cannot be cancelled by the Civil

Court. In view of the aforesaid facts, the plaintiffs cannot take the benefit of the judgment and decree dated 07.09.2000 passed in favour of Gurdial Singh @ Hardial Singh after the lapse of such a long time especially so when the aforesaid judgment and decree dated 07.09.2000 was never got implemented by Gurdial Singh @ Hardial Singh in the revenue record. It is further submitted that the addresses of the defendants in the partition application were given correctly as at that time. The respondents were residing at the addresses mentioned in the partition application as per the knowledge of the defendants No.1 to 10. The present plaintiffs were fully conversant about the pendency of the partition application but they intentionally failed to appear before the Court and now they have no right to challenge the said partition proceedings. All the averments of the plaint have been denied and a prayer for dismissal of the present suit has been made.

4. Defendants No.3, 5, 6, 8, 9 and 10 filed their separate written statement on the same facts as mentioned by defendants No. 1, 2, 12, 13, 14, 17, 18, 21, 24 to 28 in their written statement and the same is not hereby reproduced in order to avoid repetition of facts.

5. Defendants No.31 and 32 have filed their separate written statement taking similar legal objections. **On merits**, it is submitted that defendants No.1 and 9 have mortgaged their land to the defendants and denied all the remaining averments of the plaint. At last, a prayer for dismissal of the present suit has been made. Defendant No.34 submitted that he is performa defendant and need not to file written statement.

6. Defendant No.38 filed his separate written statement taking similar legal objections as taken by the other defendants. On merits, he denied all the averments of the plaint and prayer for dismissal of the suit has been made.

7. Replication to the written statement was not filed. From the pleadings of the parties, following issues were framed by the court of the then Learned Additional Civil Judge, Senior Division, Phul vide order dated 08.10.2018:-

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
3. Whether suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD
5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
6. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD
7. Whether plaintiffs have not come to the court with clean hands? OPD.
8. Whether suit is bad for non joinder of necessary parties? OPD

9. **Whether this court has no jurisdiction to try the present suit? OPD**
 10. **Whether plaintiffs have not served notice under Section 80 CPC upon the defendants before filing the present suit? OPD**
 11. **Relief.**
8. The parties were given due opportunities to adduce evidence in support of their respective claims.
9. In order to prove the case, the plaintiffs examined Sukhmander Singh, Superintendent Office SDM, Maur as PW1 who produced the summoned record pertaining to file 3818 dated 01.09.2017 with regard to application moved by Karamjit Singh. He proved on record applications moved by Karamjit Singh and Nirmal Singh as Ex. PW1/A to Ex. PW1/D, copy of order of FCR as Ex. PW1/E and Ex. PW1/F, copy of application dated 12.08.2017 as Ex. PW1/G, copy of order of the Hon'ble High Court as Ex. PW1/H, copy of application dated 04.05.2018 moved by Karamjit Singh as Ex. PW1/I, Office letters as Ex. PW1/J to PW1/M. However, this witness did not turn up for the purpose of his remaining examination in chief so his evidence cannot be taken into consideration.
10. The plaintiff further examined Constable Tarandeep Singh as PW2 who produced the summoned record pertaining to FIR bearing number 69 dated 19.07.2018 under Section 465, 468, 471, 120-B IPC, PS Sadar Rampura and proved the copy of same as Ex. PW2/A.
11. The plaintiff further examined Jasvir Kaur Clerk, Complaint

Branch, DC Office Bathinda as PW3 who produced and proved the summoned record i.e. application dated 11.10.2017 moved by Karamjit Singh as Ex. PW3/A, letter issued by ADC Bathinda as Ex. PW3/B, letter bearing number 626 dated 09.03.2018 as Ex. PW3/C, letter bearing number 72 dated 13.03.2018 as Ex. PW3/D, letter bearing number 838 dated 03.04.2018 as Ex. PW3/E, report SDM Maur as Ex. PW3/F, letter bearing number 905 dated 20.03.2018 as Ex. PW3/G, reports as Ex. PW3/H and Ex. PW3/I, letters dated 29.07.2017, 15.012.2017 as Ex. PW3/J to Ex. PW3/L.

12. The plaintiffs further examined Hardeep Singh, Record Keeper, Phul as PW4 who produced the summoned record pertaining to the Civil Suit bearing number 556 datd 29.08.1992 titled as “Gurdial Singh Vs. Gurdial Singh” and proved certified copy of judgment and decree sheet dated 07.09.2000 as Ex. PW4/A and Ex. PW4/B respectively.

13. The plaintiff no. 2 Nirmal Singh stepped in the witness box as PW5 and by way of his duly sworn affidavit Ex. PW5/A, he deposed verbatim to the stand taken by him in his plaint and the same is not hereby reproduced for the sake of brevity and to avoid the repetition of facts. In his documentary evidence he placed on record the certifies copies of orders passed by Naib Tehsildar, Balianwali in parition file bearing number 299 as Ex. PW5/A to Ex. PW5/Z and Ex. PW5/A1 to Ex. PW5/A7, copy of will dated 20.08.2004 as Ex. PW5/A8, copy of Ration Card, Aadhar Car, Voter Card as Ex. PW5/A9 to Ex. PW5/A11, copy of order dated 21.02.2018 as Ex. PW5/A12, copy of Jamabandi for the year

2016-17 and 2011-12 as Ex. PW5/A13 and Ex. PW5/A14 respectively, certified copy of plaint dated 26.05.2017 as Ex. PW5/A15, copies of Aadhar Card of Gurmail Kaur and Jasvir Singh as Ex. PW5/A16 and Ex. PW5/A17, voter card of Gurmail Kaur and Jasvir Singh as Ex. PW5/A18 and Ex. PW5/A20, copy of death certificate of Gurdial Singh as Ex. PW5/A19.

14. Thereafter, learned counsel for the plaintiffs closed the evidence on behalf of the plaintiffs on 26.11.2019.

15. In order to rebut the case of the plaintiffs, defendant no. 1 Karamjit Singh examined himself as DW1 and vide his duly sworn affidavit Ex. DW1/A, he deposed verbatim to the averments of his written statement and the same are not hereby reproduced for the sake of brevity and in order to avoid repetition of facts.

16. The defendants further examined Tarsem Lal, Retired Kanungo as DW2 who deposed that on 01.12.2015, he complied with order dated 30.11.2015 passed by Naib Tehsildar, Balianwali vide which he affixed the Munadi and entered a rapat in the rapat Roz Namcha and proved copy of the same as Ex. DW2/A. He further deposed that on 27.09.2016, he carried out the proceedings with regard to possession (Kabza Karwahi) at Village Peerkot and proved rapat bearing number 43 in this regard as Ex. DW2/B.

17. The defendants further examined Balwinder Singh, Naib Tehsildar as DW3 who deposed that on 27.09.2016 he was appointed as Field Kanungo, Balianwali and on that day, Kabza Karwahi as per the

orders of AC First Grade was conducted in case titled as “Mandar Singh Vs. Nirmal Singh” and proved rapat bearing number 43 in this regard as Ex. DW2/B.

18. The defendant Karamjit Singh tender into evidence Jamabandi for the year 2016-17 as Ex. D1, Khasra Girdawari as Ex. D2, copy of order in CWP No. 23583 of 2016 as Ex. D3, copy of order dated 16.08.2017 passed by the court the then Learned Civil Judge, Junior Division, Phul as Ex. D4. Thereafter, learned counsel for defendants number 1, 2, 3, 12 to 14, 17, 18, 21, 24 to 28 and 34 closed oral evidence on their behalf on 27.01.2022 and defendant Karamjit Singh after tendering into evidence copy of mutation bearing number 2918 as Ex. DX by way of additional evidence closed his evidence on 28.07.2022.

19. It is pertinent to mention here that during the pendency of the present case, learned counsel for defendants No. 5, 6, 9, 10, 31 and 32 pleaded no instructions on their behalf and as such vide order dated 04.02.2022, they were proceeded against exparte.

20. Thereafter, the plaintiff Jasvir Singh tendered certified copy of order dated 15.02.2022 as Ex. PA, copy of affidavit and cross examination of Karamjit Singh as Ex. PB to Ex. PD, copy of application dated 15.02.2022 and its reply as Ex. PE and Ex. PF, certified copy of plaint dated 26.05.2017 as Ex. PG and copy of affidavit dated 01.03.2019 as Ex. PH in his rebuttal evidence. Learned counsel for the plaintiff tendered into evidence order dated 22.02.1993 passed by the Office of Upper Director Chakbandi, Punjab as Mark-A in rebuttal evidence and

copy of order dated 13.07.2022 passed by the Hon'ble Punjab and Haryana High Court as Ex. AX, copy of order dated 27.09.2022 passed by the court of Learned Civil Judge, Junior Division, Phul and amended decree sheet as Ex. AY and Ex. AZ respectively, in the additional evidence of the plaintiff and thereafter, closed the rebuttal evidence on behalf of the plaintiff on 20.01.2023

21. I have heard the learned counsel for the parties and have gone through the case file. My issues wise findings is as under:-

Issues No.1 and 9:

- 1) *Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP*
- 9) *Whether this court has no jurisdiction to try the present suit? OPD*

22. The onus to prove issue no. 1 was upon the plaintiffs whereas the onus to prove issue no. 9 was upon the defendants. By way of the present suit, plaintiffs have sought the relief of declaration to the effect that the partition proceedings decided on 02.05.2016 are liable to be set aside being not binding on the legal rights of the plaintiffs. On the other hand, learned counsel for the defendants argued that the plaintiffs cannot claim any relief from the civil court as jurisdiction of civil courts is specifically barred under the provisions of Section 158 of the Punjab Land Revenue Act (hereinafter referred to as Act).

23. Learned counsel for the plaintiffs argued that deceased Gurdial Singh @ Hardial Singh (predecessor in interest of the plaintiffs)

was the owner in possession of property measuring 89 Kanal 5 Marlas by virtue of Khangi Takseem and in a Civil Suit decided on 07.09.2000, Gurdial Singh was declared as owner of the said property and the partition proceedings initiated by Bhola Singh, Karamjit Singh etc. was declared as null and void. Despite judgment and decree dated 07.09.2000, the revenue officials in connivance with the defendants had not entered the ownership of Gurdial Singh in the revenue record and had illegally decided the partition proceedings on 02.05.2016. It is further submitted that the plaintiffs are resident of Village Peerkot but the defendants in order to cause wrongful loss to the plaintiffs had wrongly mentioned their addresses at Village Ubha, Tehsil and District Mansa and as such, the partition proceedings decided on 02.05.2016 are liable to be set aside.

24. In order to prove the actual ownership of Gurdial Singh over the property measuring 89 Kanal 5 Marlas, the plaintiffs had placed on record certified copy of judgment and decree sheet dated 07.09.2000 as Ex. PW4/A and Ex. PW4/B and perusal of the said judgment and decree reveals that the suit filed by Gurdial Singh @ Hardial Singh was decreed by the court of the then learned Civil Judge, Junior Division, Phul and the partition proceedings decided on 04.02.1992 were set aside. But in the relief clause, instead of the plaintiff Gurdial Singh @ Hardial Singh, the defendant was declared the owner in possession of the said property. Thereafter, the plaintiffs approached the Hon'ble High Court for making necessary correction in the judgment and decree Ex. PW4/A and Ex. PW4/B and in pursuance of the said application the Hon'ble Punjab

and Haryana High Court vide order dated 13.07.2022 passed in Civil Revision number 593 of 2017 Ex. AX, directed the trial court to correct the typographical error and to prepare a fresh decree sheet. Thereafter, as per the directions of the Hon'ble High Court fresh decree sheet was ordered to be prepared by the court of Learned Civil Judge, Junior Division, Phul vide order dated 29.07.2022 Ex. AY and fresh decree sheet Ex. AZ was prepared. In the partition proceedings decided on 02.05.2016, the aforesaid fact with regard to ownership of Gurdial Singh @ Hardial Singh to the extent of 89 Kanal 5 Marlas share was not taken into consideration and the partition proceedings were decided otherwise. Even, DW1 Karamjit Singh during the course of his cross examination had admitted the fact that by virtue of judgment and decree dated 07.09.2000, Gurdial Singh @ Hardial Singh became the owner in possession of the property measuring 89 Kanal 5 Marlas and till date the plaintiffs are in possession of the said property and their possession over the same is for the last 30 years. He further admitted the fact that the judgment dated 07.09.2000 was upheld by the Hon'ble Punjab and Haryana High Court. He further admitted the fact that due to wrong mentioning of the name of defendant instead of plaintiff in the judgment dated 07.09.2000, the name of Gurdial Singh was not recorded as owner in the revenue record.

25. So, from the above oral as well as documentary evidence, it is proved that deceased Gurdial Singh was the owner in possession of 89 Kanal 5 Marlas land but during the partition proceedings the said fact was not taken into consideration and as title of the suit property is involved in

the present case, so, this court has got the jurisdiction to try and decide the present case and the suit is not barred under the provisions of Section 158 of the Punjab Land Revenue Act.

26. Learned counsel for the plaintiffs further argued that the addresses of the plaintiffs were wrongly mentioned as being residents of Village Ubha whereas the plaintiffs are residing at Village Peerkot since for the last many years. The plaintiffs have placed on record application for partition moved by Mandar Singh and Others as Ex. PW5/G and from perusal of the same it transpires that the plaintiffs were shown to be residing at Village Ubha, Tehsil and District Mansa in the head note of the application and due to their non-appearance they were proceeded against *ex parte* but the defendant Karamjit Singh during the course of his cross examination has himself admitted that the plaintiffs are in possession of the suit property for the last more than 30 years. This fact is also admitted by DW2 Tarsem Lal who deposed that the plaintiffs are residing at Village Peerkot since the year 2012. So, from the above discussed evidence as well as on account of the admissions of the defendant and his witnesses it is duly proved on record that the plaintiffs are residing at Village Peerkot but during the partition proceedings, their address was wrongly mentioned as that of Village Ubha. It appears that the partition proceedings were being carried out with a malafide intention to cause wrongful loss to the plaintiffs and by mentioning wrong addresses.

27. In view of the above discussion, both these issues are decided in favour of the plaintiffs and against the defendants.

Issue No. 2:-***2. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP***

28. The onus to prove this issue was upon the plaintiffs. In view of my findings given herein above on issue no.1 when the plaintiffs are held entitled to the relief of declaration, so certainly they are also entitled to the relief of permanent injunction as prayed for by them. Therefore, this issue is decided in favour of the plaintiffs and against the defendants.

Issues No. 3 & 4:-***3. Whether suit of the plaintiffs is not maintainable in the present form? OPD******4. Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD***

29. The onus to prove both these issues was upon the defendants. But no evidence has been led by the defendants to prove these issues. However, in view of my findings on issue no.1 above, the suit of the plaintiffs is very well maintainable and they had got every cause of action and locus standi to file the present suit. Hence, both these issues are decided in favour of the plaintiffs and against the defendants.

Issues No. 5 and 7:-***5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD******7. Whether the plaintiffs have not come to the court with clean hands? OPD.***

30. Onus to prove both these issues was upon the defendants. But the defendants have not led any evidence to prove these issues nor these issues were pressed during the course of arguments. As such both these issues are decided in favour of the plaintiffs and against the defendants.

Issue No. 6:-

5) Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

31. Onus to prove issue no.6 was upon the defendants but the defendants have not led any evidence to prove this issue. Even, the plaintiffs has filed the present suit for declaration and permanent injunction and had affixed requisite court fee at the time of filing of the present case. So, issue no.6 is decided in favour of plaintiffs and against the defendants.

Issue No. 8:-

8. Whether suit is bad for non-joinder of necessary parties? OPD

32. The onus to prove issue no. 8 was upon the defendants. However, no evidence has been led by the defendants to prove as to how the suit of the plaintiff is bad for non-joinder of necessary parties. In view of the above discussion, the aforesaid issue is decided in favour of the plaintiffs and against the defendants.

Issue No. 10:-

10. Whether plaintiffs have not served notice under Section 80 CPC upon the defendants before filing the present suit? OPD

33. Onus to prove issues no.10 was upon the defendants but the defendants have not lead any evidence to prove the aforesaid issues nor this issue was pressed during the course of arguments. As such, this issue is decided against the defendants and in favour of plaintiff.

RELIEF (Issue No. 11):- (to be Checked)

34. In view of my findings on issues discussed above, the suit of the plaintiffs succeeds and the same is hereby **decreed with no order as to costs**. It is hereby declared that the partition proceedings bearing number 299/reader dated 28.01.2016 decided on 02.05.2016 Village Peerkot, were carried out without taking into consideration judgment and decree dated 07.09.2000 in case titled as “Gurdial Singh @ Hardial Singh Vs. Gurdial Singh” bearing CS No. 556 of 29.08.1992. So, the revenue authorities are directed to carry on the partition proceedings after considering the said judgment an decree and after determining the share of Gurdial Singh @ Hardial Singh on the basis of said judgment and decree. The defendants are further restrained from taking forcible possession of the suit property on the basis of order of partition dated 02.05.2016. Decree sheet be prepared accordingly and file be consigned to Judicial Record Room, Phul after due compliance.

Pronounced in Open Court
20.01.2023

Vandana/ Stenographer Grade-II
Direct Dictation

Meenakshi Gupta, PCS
Addl. Civil Judge (Senior Division),
Phul. UID No. PB0369