

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1150 of 1990 (O&M)

Date of decision: February 18, 2015.

Balbir

... Appellant

v.

Matadin etc.

... Respondents

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Argued by: Shri Sanjay Mittal, Advocate for the appellant.

Shri C.B. Goel, Advocate for the respondents.

Dr. Bharat Bhushan Parsoon, J.

A suit for seeking decree of permanent injunction restraining the defendants from raising any construction in any specific portion of the suit land without getting it partitioned, was filed by the plaintiff averring that he is in possession of disputed land to the extent of his share.

This suit was contested by the defendants who claimed that the land had been partitioned 30 years ago and every co-sharer now was in possession of land of his share after having raised construction of their respective houses on such portion of land.

On 21.9.1983, following issue were settled for adjudication:-

"1. Whether the plaintiff is entitled to the relief of injunction as prayed for on the grounds mentioned in the plaint" OPP

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

3. Whether the plaintiff is estopped from filing the present suit by his act, conduct and waiver? OPD

4. Whether the defendants are entitled to special cost under Section 35-A CPC? OPD

5. Relief?”

During the course of proceedings before the lower court, defendant No.1, respondent No.2 herein, was proceeded against ex-parte on 21.5.1983, whereas defendant No.2, appellant herein, and defendant No.4, respondent No.4 herein, since deceased and represented by his LRs viz., 4-A and 4-B, were proceeded against ex-parte on 5.9.1987. Defendant No.3, respondent No.3 herein, was proceeded against ex-parte on 31.7.1986. There were four defendants in the suit before the lower court and all of the four had been proceeded against ex-parte.

After receiving oral as well as documentary evidence from the plaintiff, all the issues were decided in favour of the plaintiff-respondent No.1 herein. The suit was decreed on 5.9.1987.

This decree was challenged by Phool Chand, who was defendant No.1 in the suit and is respondent No.2 in the present regular second appeal. The appeal was hotly contested. It was dismissed on 15.2.1990. The decree passed by the lower court on 5.9.1987 and of the first appellate court of 15.2.1990 are under challenge in this regular second appeal.

The substantial question of law for determination in this appeal is as under:-

“Whether a co-sharer is entitled to file a suit for permanent injunction against other co-sharers?”

In a suit for permanent injunction question of title becomes inconsequential. Consequently, the application under Order XLI Rule 27 CPC made by the appellant Balbir, who was defendant No.2 in the trial court, to place on record copy of judgment dated 14.8.1990 vide which suit

for declaration filed by respondent-plaintiff Matadin was decided determining question of title among the parties, for adjudication of the present appeal, is not of relevance.

Looking the matter from another angle, there is an admission of the defendants in the present litigation to the effect that the parties, including the plaintiff-respondent, are co-sharers. Once the plaintiff-respondent is admitted to be a co-sharer by the defendants including appellant Balbir in their pleadings before the lower court, judgment dated 14.8.1989 sought to be produced in additional evidence by the present appellant Balbir neither has merit nor would be helpful for the court in making complete, effective and competent adjudication of the dispute. Consequently, the application is dismissed.

It is relevant to mention here that though the defendants have not disputed respondent-plaintiff Matadin to be a co-sharer in the land, they have come up with a plea that the land had been partitioned long back and all the co-sharers including plaintiff Matadin had built up their houses on their respective shares and were in possession of separate parcels thereof.

Notwithstanding the fact that all the defendants including the appellant-defendant had been proceeded against ex-parte before the lower court, defendants No.2 to 4 had submitted their written statement though defendant No.2 (appellant) and defendant No.3 (respondent No.3) had submitted a joint written statements, a separate written statement had come from defendant No.4 (respondent No.4).

As per the pleadings, the defendants had claimed that Bharpur Singh, defendant no.3 (now respondent) had purchased land measuring 1 kanal 10 marla out of the suit land from defendant No.2 Balbir, now appellant, and this sale of land had formed the genesis of litigation started

by respondent-plaintiff, because defendant No.2 Balbir, now appellant, after purchase of land measuring 1 kanal 10 marla from defendant No.2 – appellant herein, had started raising construction, which move was objected to by the respondent-plaintiff though he himself had constructed two storeyed haveli in the land of his share of the suit land. In short, from pleadings offered by the contesting defendants, it is clear that there was no dispute raised by them regarding co-ownership of respondent-plaintiff Matadin but the only rider put forth by them was that the partition had been effected about 30 years ago.

It is interesting to note that though the defendants had claimed every co-sharer to be in possession of land of his share pursuant to alleged partition but had not given the particulars of the partition, such as date, month or year, as also the circumstances in which it was effected and details of the persons in presence of whom, the same had been carried out.

Once there is a clear admission of the defendants including the present appellant-defendant Balbir that respondent-plaintiff inter-alia was in possession of part of the suit land and had raised construction of two storeyed haveli thereon, where he was living with his family, plea of the appellant-defendant that the suit for permanent injunction was not maintainable because he was not in possession of any land, turns out to be hollow and is of no merit.

When we glance through the impugned judgments of the lower court as well as of the appellate court, it clearly emerges that there is not even a whisper made by any of the witnesses produced by the respondent-plaintiff that the land in litigation had ever been partitioned. Even revenue record, i.e., mutation Ex.P6 shows respondent Matadin son of Mukh Ram to be in possession of 1 Kanal of land out of the joint land. Even jamabandi for the year 1978-79 (Ex.P7) corroborates this fact.

When there is sufficient evidence, oral as well as documentary on record, revealing the land to be joint of the parties and there is no material or evidence to sustain the plea of the defendants that the land was partitioned 30 years ago, he has every right to restrain the other defendants not to change the nature of the joint land to the prejudice of other co-sharers.

Courts also do not want nature of the joint land to be changed with a view to curtail multiplicity of litigation and to avoid involvement of third party rights. Remedy for the co-sharers is always for partition of the land. Even sale by appellant-defendant Balbir in favour of defendant Bharpur Singh, now respondent No.3, being part of his share of land, is subject to partition of the suit property. Raising of any construction by any of the defendants/co-sharers on any part of the land in suit, would not only amount to change in the nature of the land but would also amount to ouster of the plaintiff-respondent herein from enjoyment of the joint land, wherein he is deemed to be in possession of every inch thereof.

Consequently, it is crystal clear that the impugned judgment and decree dated 5.9.1987 of the lower as also dated 15.2.1990 of the first appellate court had rightly been passed. There is neither any factual nor legal error. Substantial question of law is answered against the appellant-defendant. The appeal has no merit and is dismissed.

February 18, 2015.
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[Dr. Bharat Bhushan Parsoon]
Judge

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*