IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1550-1989 (O&M)

Decided on : 28.01.2015

Lachhi and another ..... Appellants

VERSUS

Sish Ram and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr.D.D.Bansal, Advocate, for the appellants.

Mr.Sudhir Aggarwal, Advocate, for respondent No.1.

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RAJIVE BHALLA, J. (ORAL)

The appellants challenge judgments and decrees dated 21.05.1987 and 17.05.1989, passed by the Sub Judge, Ist Class, Palwal and the Additional District Judge, Faridabad, respectively, decreeing a suit for declaration and permanent injunction in favour of Sish Ram (respondent No.1 herein).

Counsel for the appellants submits that vide sale deed dated 09.05.1975, Lachhi, appellant No.1 purchased half share of Gobind Ram, in land measuring 13 kanals and 19 marlas, including the share in a gitwar measuring 2 kanals and 14 marlas. The Courts below have wrongly relied upon partition proceedings while holding that as the land was allotted to respondent No.1, during partition, he is owner in possession of the entire gitwar. The findings recorded in an earlier suit challenging partition proceedings are irrelevant as they

cannot be construed to be an affirmation of partition proceedings or the title of respondent No.2. It is further submitted that as appellant No.1 purchased the land, in dispute, he filed an application before the Assistant Collector Ist Grade, during partition proceedings, for being impleaded as a party. The application was, however, dismissed, compelling the appellant to file a civil suit challenging the validity of partition proceedings. The suit was dismissed by recording a finding that the appellant is owner but is not in possession. The findings recorded in this suit are not binding in the present proceedings but the Courts below have relied upon these findings, to hold that respondent No.1 is owner in possession of the land, in dispute.

Counsel for the appellant states that the following substantial question of law arises for adjudication: -

> **"Whether findings recorded in partition proceedings and in the earlier suit are relevant in the present suit?**

Counsel for Sish Ram, respondent No.1, submits that appellant No.1 and his brother Gobind Ram (proforma respondent No.2) were co-sharers to the extent of half share in 13 kanals and 19 marlas and a gitwar No.117, measuring 2 kanals and 14 marlas. Respondent No.1 filed an application for partition. During pendency of the application for partition, Gobind Ram sold his share to the appellant who filed an application for being impleaded as a party. The application was, admittedly, dismissed. Upon conclusion of

partition proceedings, gitwar No.117 was allotted to respondent No.1. Taking advantage of the fact that revenue entries did not reflect the altered status of parties, Lachhi, appellant No.1, filed a suit, challenging the partition proceedings. The suit and the appeal were dismissed. Respondent No.1 was compelled to file the present suit seeking a declaration of his ownership and possession over the land, in dispute as appellant No.1 continued to threaten the ownership and possession of respondent No.1. The Courts below have rightly held that as the land, in dispute, was allotted to respondent No.1 during partition, the ownership and possession of the land, in dispute, vests in respondent No.1.

Counsel for the parties have been heard, impugned judgments and decrees and the record have been perused.

A perusal of the facts reveals that Sish Ram and Gobind Ram (respondents No.1 and 2 respectively) were co-sharers to the extent of half share each in a parcel of land and in gitwar No.117. Sish Ram filed an application for partition of the joint holdings and the gitwar. During pendency of partition proceedings, Lachhi, appellant No.1, purchased the half share of Gobind Ram and filed an application for being impleaded as a party. The application was dismissed. Upon conclusion of partition proceedings, gitwar No.117 was allotted to respondent No.1. Lachhi filed a suit to challenge partition proceedings and also prayed for grant of an injunction to protect his possession. The suit was dismissed by the Senior Sub

Judge Ist Class, Gurgaon, on 27.02.1979 (Ex.P7). The appeal was dismissed by the Additional District Judge, Gurgaon, on 24.08.1979 (Ex.P8).

Sish Ram (respondent No.1) filed the present suit, pleading therein that as during partition proceedings gitwar No.117 has been allotted to him and the civil suit filed by appellant No.1, challenging partition proceedings, has been dismissed, a declaration of his ownership and possession of gitwar No.117, may be granted. Lachhi, appellant No.1 filed a reply controverting averments in the plaint and by relying upon the sale deed, sought dismissal of the suit.

After considering the pleadings, the trial Court framed the following issues: -

> "1. Whether the plaintiff is owner in exclusive possession of plot no.117 as alleged? OPP
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> 2. Whether the land in question was partitioned by a Court of competent jurisdiction between the plaintiff and defendant No.2? OPP
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> 3. Whether the suit is not maintainable in the present form? OPD
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> 4. Whether the suit is not within the period of limitation? OPD
>
> 5. Relief."

The trial Court after considering the pleadings and the evidence, held as follows: -

> "Hence, there is an overwhelming evidence on record to show that the partition proceedings between Sish Ram and Govind Ram dated 23.5.77 as decided by ACIG, Gurgaon are correct by which the Khasra No.117 was given to the plaintiff and the said partition proceedings and the impugned sale vide registered sale deed dated 9.5.75 by deft. no.1 of the part of the properties of the deft. no.1 and deft. no.2 for

> partition have been found to be correct by the Civil court vide its judgment dated 27.2.79 which was up-held by the Hon'ble appellate Court on 24.8.79 and thus the rights and claim of Lachhi, the present defendant who was plaintiff in the civil suit no.89 of 28.3.77 decided on 27.2.79 was dismissed. Hence, the same claim of the defendant Lachhi is not tenable in the present case on the basis of wrong entry in the revenue record of jamabandi 1982-83 and the khasra girdawari. Thus, the plaintiff is owner in exclusive possession of the suit property bearing Khewat No.57 Khata No.77 Plot No.117(2-4) and I decide it in favour of the plaintiff and against the defendants."

A perusal of findings recorded by the trial Court reveal that the trial Court has held that as gitwar No.117 fell to the share of respondent No.1, during partition proceedings and the suit filed by the appellants, challenging partition proceedings, has been dismissed, respondent No.1 has become owner in possession of gitwar No.117. The findings so recorded, have been affirmed by the first appellate Court by dismissal of the appeal filed by the appellants.

Admittedly, gitwar No.117 was allotted to respondent No.1, during partition proceedings thereby bringing an end to the status of Sish Ram and Gobind Ram and as a consequence of Lachhi (appellant No.1), who had stepped into the shoes of Gobind Ram, as co-sharers. The dismissal of the suit filed by the appellant, challenging partition proceedings has affirmed partition proceedings and as a consequence, the allotment of plot No.117 to respondent No.1. The mere fact that a wrong entry continued to be reflected in the revenue record, cannot be a ground to accept the appeal or to hold that the sale deed still continues to confer any right, title or

interest with respect to plot No.117 upon Lachhi, appellant No.1. The judgments and decrees dismissing the suit filed by Lachhi are relevant facts that have rightly been relied by the Courts below while decreeing the suit and dismissing the appeal.

Consequently, the substantial question of law is answered against the appellants.

Finding no merit in the appeal, the same is dismissed, with no order as to costs.

28.01.2015 **[RAJIVE BHALLA]**
Shamsher S. Sabharwal **JUDGE**

SHAMSHER SINGH
2015.05.04 14:18
I attest to the accuracy and
authenticity of this document
Chandigarh