

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

RSA No.4334 of 2009(O&M)
Date of decision: 04.02.2015

Jawala Parshad

...Appellant

Versus

Sunder Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vikram Singh, Advocate for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by plaintiff-Kashi Ram was partly decreed by the trial court vide judgment and decree dated 31.05.2006. Appeal preferred by the plaintiff against the said decree was accepted and accordingly, the suit was decreed as prayed for. This is how, defendant No.1 i.e. Jawala Parshad is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a decree for possession by way of partition of the properties described in para No.1 (A, B, C) of the plaint i.e. 1/3rd share in the property described in para No.1A of the plaint i.e. gair mumkin gait. And 1/4th share in the property described in

para No.1B of the plaint i.e. shops. And 1/4th share in the property described in para No.1C of the plaint i.e. property within the abadi of the village. By way of consequential relief, a decree for injunction was also claimed, restraining defendants from alienating the suit property in any manner and also from raising any construction therein. It was averred that plaintiff and defendants No.1 & 2 were joint owners in possession of the property bearing khewat No.615, khatauni No.685, khasra No.198/2 (0-8), situated in village Dharuhera, Tehsil and District Rewari. Further, plaintiff and defendants were also owners in joint possession of a shop shown in dark colour in the site plan appended with the plaint, as the same was purchased vide sale deed dated 25.11.1957. Likewise, plaintiff and defendants were also joint owners in possession of the property that was bounded on the eastern side by Sehan Chowk and rasta, on the western side by property of the plaintiff and a rasta, on the northern side by a road and on the southern side by a street and houses of Malu and Udmi etc.

In defence, it was pleaded, inter alia, by defendant No.1 that civil court had no jurisdiction to partition gair mumkin gait, comprised in khasra No.198/2(8-8). Defendant No.1 claimed himself to be the exclusive owner in possession of the shop and the room constructed thereon. As the said shop was mutually partitioned about 37/38 years back and the plaintiff had no concern therewith. However, it was

admitted that plaintiff, defendant No.1 and defendant No.2, had equal shares in the land bearing khasra No.198/2.

In a separate written statement filed by defendant No.2, it was pleaded, inter alia, that he was working in Delhi at the time when the shop in question was purchased vide sale deed dated 25.11.1957. And in fact, he i.e. Munni Lal alone had paid the entire sale consideration to his brother Ram Jiwan, but he in turn got a sale deed executed in his name and also in the name of the plaintiff and defendant No.1. Khasra No.198/2 was purported to have been partitioned about 25 years back. Boundaries of property, depicted in para No.1C of the plaint, were alleged to be incorrect and wrong.

Defendants No.3 to 5, in a separate written statement filed by them, conceded the claim of the plaintiff.

Trial court, on a consideration of the matter in issue and evidence on record, observed that for plaintiff to succeed, he was required to prove that he in fact was a co-sharer in all the three properties i.e. depicted in para Nos.1A, 1B & 1C of the plaint. Sale deed dated 25.11.1957 (Ex.P3) revealed that the land, upon which the shops were subsequently constructed, was owned by all the four brothers and they were joint owners in possession thereof. Evidence led by Dal Chand (DW2) that his father Munni Lal was the exclusive owner of all the shops, was hardly of any consequence as neither Munni Lal i.e. successor-in-interest nor his heirs ever questioned the

sale deed (Ex.P2). Though, Jawala Parshad i.e. defendant No.1 was in possession of these shops and rooms, but he could not be held to be the exclusive owner of the said property in the wake of the sale deed (Ex.P2). Further, Jawala Parshad (DW5), in his cross-examination, testified that the shops in question were purchased by all four brothers. That being so, it was concluded that Kashi Ram (plaintiff), defendant No.1-Jawala Parshad and defendant No.2-Munni Lal and heirs of defendant No.3 i.e. Ram Jiwan, were owners to the extent of 1/4th share each. Jamabandi for the year 1993-94 (Ex.P5), showed Jawala Parshad, Kashi Ram and Munshi Ram as owners in possession of a land bearing khasra No.198/2 (0-8). Jamabandi for the year 1998-99 (Ex.P6), corroborated the said position. Nothing was brought on record to show that the said property had already been partitioned between the parties. Resultantly, plaintiff, defendant No.1 and defendant No.2 were joint owners in equal shares of land bearing khasra No.198/2, i.e. gair mumkin gait. As regards the property, depicted in para No.1C of the plaint, it was observed that plaintiff had claimed 1/4th share therein, but nothing was averred in the plaint as to how the plaintiff had acquired title in the said property. Property, mentioned in para No.1C of the plaint, was never claimed as ancestral property of the parties either. PW2, Ram Kanwar i.e. son of plaintiff Kashi Ram, never deposed that the said property was

purchased by the parties from some other person. Accordingly, it was concluded that for plaintiff to seek partition, he was required to prove that he was a co-sharer in property No.1C. Thus, by merely producing a site plan (Ex.P4), it could not be said that the plaintiff was a co-sharer. Resultantly, it was concluded that plaintiff was a co-sharer and entitled to partition qua properties mentioned in paras No.1A & 1B, in terms of his share in those properties. However, as regard property depicted in para No.1C, the suit of the plaintiff was dismissed.

It would be apposite to point out at this juncture, that none of the defendants assailed the decree rendered by the trial court and only the plaintiff preferred an appeal against the said decree. Therefore, the short question before the first appellate court was whether plaintiff was a co-sharer even in the property depicted in para No.1C.

First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found that PW2 Ram Kumar son of Kashi Ram appeared in support of his case and proved his claim. No suggestion was put to him that in fact, defendant No.1 had purchased the property in issue, pursuant to an agreement to sell (Ex.DW2/1). Further, in para No.1C of the written statement, filed by defendant No.1, it was set out that he was the owner in possession of the said property, pursuant to an oral partition that had taken place

on 37/38 years ago. Whereas, defendant No.2, in para No.2 of his written statement maintained that he had 1/4th share in the property No.1C. Agreement to sell (Ex.DW4/A) propounded by defendant No.1, was discarded as the same was an unregistered document and could not be looked into in the wake of the provisions of Section 54 of the Transfer of Property Act read with Section 17 of the Registration Act. Likewise, Ex.DW2/1 was also rejected out of consideration being completely beyond pleadings. Resultantly, plea of defendant No.1 that he was the exclusive owner in possession of the said property, pursuant to an oral partition, was found to be wholly unreliable and unproved. Further, as property depicted in para No.1C of the plaint was within abadi, therefore, in the absence of any revenue record, there was a presumption qua jointness of ownership of the property. Thus, even the said property was held to be jointly owned by the parties. And a preliminary decree for partition regarding properties mentioned in para Nos.1A, 1B & 1C was granted.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. All what he has urged is that the plaintiff having failed to prove that he was one of the co-sharer qua the

property depicted in para No.1C of the plaint, he was not entitled to a decree for possession by way of partition. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Records show that specific case set out by the plaintiff was that the property depicted in para No.1C of the plaint was jointly owned and possessed by the parties. Son of the plaintiff i.e. Ram Kumar (PW2) deposed in terms of the claim of the plaintiff. Defendant No.1, in the written statement filed by him, had set out, in no uncertain terms, that the said property had fallen to his share pursuant to an oral family partition about 37/38 years ago. Once that was so, needless to assert, defendant No.1 conceded that originally the said property was joint between the parties and pursuant to an oral family partition, that was purported to have been arrived at about 37/38 years ago, he had acquired exclusive title therein. However, nothing was brought on record to prove that any such family partition was ever arrived at between the parties. That being so, it would not be incorrect to observe that there was an admission by defendant No.1 that property No.1C, was jointly owned by the parties. Likewise, even defendant No.2 in a separate written statement filed by him claimed that even he had 1/4th share in the

property depicted in para No.1C of the plaint. Needless to assert, he also conceded that the said property was joint between the parties as he also held 1/4th share therein. Concededly, the property depicted in para No.1C of the plaint formed part of an abadi in the village and there existed no revenue record if it indeed was exclusively owned and possessed by defendant No.1. That being so, the necessary and inevitable conclusion that could be arrived at was that the said property was jointly owned and possessed by the parties. Learned counsel for the appellant could not point out as to how the conclusion arrived at by the first appellate court was either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 4, 2015
Rajan

(Arun Palli)
Judge