

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.3070 of 2011 (O&M)

Date of decision: 26.08.2015

Ram Chander

..... Appellant

versus

Gobind Ram and others

..... Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.S.Sihota, Senior Advocate with
Mr.B.R.Rana, Advocate for the appellant
Mr.Sanjay Mittal, Advocate for the respondents

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Appellant-defendant No.2 before the lower Court has filed this regular second appeal challenging the judgment and decree dated 21.4.2011, passed by the learned Additional District Judge, Rewari, affirming that of learned Civil Judge, Junior Division, Rewari dated 16.2.2009, vide which, suit of the plaintiff was decreed with costs and it was held that plaintiff is entitled to partition of suit property by metes and bounds regarding his 1/4th share in the suit property. The mandatory injunction was not granted since it was not pleaded during the proceedings that the defendants have raised any construction over the suit property.

Facts of the case are that Gobind Ram-plaintiff claimed that he has got 1/4th share in the property, detailed in the plaint.

Defendants are raising construction on the entire property and intend to alienate the same without recognizing the share of the plaintiff in the suit property.

In the written statement, defendant Nos.1 and 2 took the plea that the partition had already taken place between the parties vide memo of partition dated 17.4.1958. Through the said memo of partition, plaintiff had relinquished his share in the suit property in favour of the defendants. It was stated that in lieu of relinquishment of share of the plaintiff in the suit property, he was given half share in the ancestral plot Mark X. Remaining half portion of the said plot was given to Pat Ram and Ram Chander i.e. defendant Nos.1 and 2 and to late Hari Singh i.e. husband of defendant No.3 and father of defendant No.4. Half share which had fallen to the share of Pat Ram, Ram Chander and Risalo Devi, was sold by them in favour of Mahinder, Singh Ram and Subash sons of plaintiff vide sale deed dated 15.9.1988. Defendant Nos.3 and 4 were ex-parte before the lower Court.

In the replication, plaintiff denied the existence of any partition deed dated 17.4.1958. Plaintiff claimed that half share in the ancestral plot mark X was given to him because half share was vacant and without any construction. Later on, plaintiff raised construction on his half share. Subsequently, sons of the plaintiffs also purchased the remaining half share from defendants and raised construction on entire plot. From the pleadings, following issues were framed:-

1. Whether the plaintiff and defendants are joint owner in

possession of suit property and if so then what is the share of the parties? OPP

2. Whether the plaintiff is entitled to injunction as prayed for? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

5. Whether the suit is bad for non-joinder and mis-joinder of the parties? OPD

6. Whether the suit is barred? OPD

7. Whether the suit is not properly valued for the purpose of Court fee? OPD

8. Relief.

It also comes out that the said memo of partition dated 17.4.1958 was in a bahi (ledger book) and the relevant pages from the said bahi went missing and were re-constructed. Photocopy of the same was later on exhibited as Ex.D2. Ex.D2 is the document, on the basis of which, defendants claim that partition had taken place between the parties.

Undisputedly, Ami Lal had three sons. Gobind Ram plaintiff, Pat Ram and Ram Chander defendants and Hari Singh (since deceased), who has been succeeded by his legal heirs Risalo Devi and Yogesh (wife and son). Now even Risalo Devi has died and has been succeeded by her son Yogesh.

The Lower Court held that the said memo of partition bears signatures/ thumb impression of nine persons. On behalf of Ram Chander, Hari Singh had signed as Ram Chander was minor at that time. Pat Ram also signed the said memo but he did not step in

the witness box to prove the execution. Yogesh son of Hari Ram has supported the case of the plaintiff by appearing as a plaintiff's witness. There are signatures of four witnesses and thumb impression of two witnesses. There was nothing before the lower Court to show as to who had put their thumb impression on the impugned memo of partition i.e. Bhoru son of Tota and Matadeen. These witnesses were not produced by the defendants. Witnesses Ram Singh, Ram Dayal and Lillu @ Lila Ram had died.

Another witness Lakhi Ram, Lamberdar had also signed it and defendant had produced his son Dharam Singh who claimed that he could identify the signatures of his father Lakhi Ram. I am of the view that first of all, the document Ex.D2 is to be seen so as to examine whether through the said document, the disputed property was partitioned. The examination of memo Ex.D2 shows that it was executed between Gobind Ram present plaintiff Hari Singh, Pat Ram Ram Chander minor under the guardianship of Hari Singh brother. The document talks about the house situated in Rehashi Mohalla Jattan, in which, houses have been constructed. One kotha was given to Gobind Ram, one kotha was given to Hari Singh, Pat Ram and Ram Chander and in lieu of the said, the share of Gobinda in Budawali village, in which all the four brothers have the share, will be owned by remaining three brothers except Gobinda. The description of the said property is given as 'property in village Budawali'.

Now the question would arise as to whether the said memo of partition is connected with the present disputed property.

The description of property in the suit is given as under:-

East: Pucca Road. Rasta-Am

West: Plot of Sh.Radhey Sham etc.

North:House of Sh.Rampal son of Prabhu Dayal

South :House of Sh.Joginder etc. son of Sh.Jhandu Ram

On the description given in the plaint, it cannot be said that this property is the same property of Budawala regarding which memo of partition Ex.D2 was executed. Therefore, at the first instance, memo Ex.D2 is not connected with the suit property. This is in addition to the findings recorded by the lower Court that it was not proved in accordance with law. It being so, Ex.D2 was rightly not relied upon by the lower Court as well as by the first appellate Court. These are purely findings of facts. After going through the judgment of the both the Courts below, as discussed above, I am of the view that no question of law much less substantial question of law arises in the present appeal. Hence, the appeal is dismissed.

I am also of the view that in view of above noted discussions, examination of Pat Ram by way of additional evidence will not serve any purpose. As such, application for additional evidence is dismissed.

In view of disposal of the appeal, all other pending applications also stand disposed of.

26.08.2015
gk

(Kuldip Singh)
Judge