

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

RSA No.2368 of 2012 (O&M)
Date of decision : 17.08.2015

Ram Kumar and ors.

...Appellants

Versus

Kelo Devi and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Mahavir Sandhu, Advocate for the appellants.

None for respondent Nos.1 to 5.

None for respondent Nos.6 to 17.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the findings rendered by Additional District Judge/Lower Appellate Court, whereby while reversing findings on issue No.1 to 3 in favour of appellants-plaintiffs, upheld the findings of the trial Court on issue No.4, resulting into dismissal of the appeal.

Mr. Mahavir Sandhu, learned counsel appearing on behalf of appellants-plaintiffs submits that both the Courts below have committed

illegality and perversity in dismissing the suit on technical ground that there was averment, much less, proof of the exact share of the co-owners, though, Lower Appellate Court has reversed the findings on issue Nos.1 to 3 that the suit could not be dismissed on the ground of partial partition as the area measuring 1780 square yards includes plot No.28. In this regard, he has also drawn attention of this Court to the pleadings of the parties to the lis where it has been specifically been averred and submits that there has been gross illegality and perversity in dismissing the appeal on the premise that share of the parties have not been specified.

I have heard learned counsel for the appellants-plaintiffs.

Earlier, Mr. Ashok Kumar Sehrawat, Advocate had put in appearance on behalf of respondent Nos.6 to 17 but no one had put in appearance on behalf of respondent Nos.1 to 5. Today there is no representation on behalf of aforesaid respondents despite case taken up in second call.

It would apt to reproduce the operative part of findings of the Lower Appellate Court, whereby the findings of trial Court on issue No.4 has been upheld.

“A perusal of the pleadings of the plaintiffs, however, shows that although the plaintiffs have stated to be the owners in possession to the extent of ½ share, they have further mentioned that the defendants No.1 and 2 were owners in possession of remaining ½ share. To what extent is the share of the other defendants has not been stated at all. It is the pleadings of the plaintiffs that a part of the suit property has been sold to defendants No.3 to 17 and it was required of the plaintiffs to make it clear about the share of

these defendants. Without specifying the share of each person the plaintiffs are not entitled to seek the relief of partition. Therefore, although the findings of the learned lower Court which held that the suit was a suit for partial partition are reversed but it is to be seen that without the ascertainment of the share of every party to the suit no relief of partition can be granted to the plaintiffs. Accordingly, findings of the learned Lower Court although are reversed on issues No.1 to 3 but findings on issues No.4 are affirmed and plaintiffs are not entitled to the partition as claimed by them. Resultantly, the present appeal fails and is accordingly dismissed.

16. Trial Court with a copy of the judgment be sent back for strict compliance and appeal file be consigned to the record room after due compliance.”

The aforementioned findings in my view is contrary to the specific pleadings in the suit, whereby appellants-plaintiffs had categorically mentioned that the suit property had been allotted to the predecessor i.e. Co-owners namely Raghbir Singh and Shiv Lal by virtue of decree dated 23.01.1954 and as per the decree, the aforementioned person had half share each in the property in dispute. Even the defendant Nos.1 and 2 in paragraph No.4 of the written statement admitted their shares, whereas, respondent Nos.3 to 12 though averred, that the parties are not owners, but the factum of the ownership had been proved. In view of such inherent defect in impugned judgment and decree, in my view following substantial questions of law arises for determination by this Court:-

“i) Whether the impugned judgments and decrees passed by the learned courts below are illegal, bad, wrong,

erroneous, null and void, contrary to the evidence on record oral as well as documentary against the true facts and legal import of the case to the extent whereby the appellants-plaintiffs were not held entitled to the partition of the suit land as per claimed by them and thus liable to be set aside?

ii) Whether the appellants are entitled to claim $\frac{1}{2}$ share in the suit property on the basis of the Civil Court decree dated 23.01.1954 passed in civil suit of partition where under the appellants-plaintiffs have got $\frac{1}{2}$ share of the entire suit property and another $\frac{1}{2}$ share went in the account of predecessor of the defendants No.1 and 2 (Now respondents No.1 to 5)?”

The appellants-plaintiffs had sought preliminary partition decree in respect of property described, in the suit, in their favour and against defendants and further sought separate possession of half share of the suit property after partition. Once the predecessor-in-interest of the parties i.e. Raghbir Singh and Shiv Lal had acquired the ownership by way of partition decree mentioned above, and particularly when there is specific pleadings, there was no occasion for the Courts below to non-suit the appellants-plaintiffs on this ground, particularly, the Lower Appellate Court, which had reversed, the findings on issue No.1 to 3, whereby trial Court had rejected the claim of the appellants-plaintiffs vis-a-vis the partial partition, thus, in my view the findings rendered by both the Courts below in this regard are hereby set aside. The aforementioned questions as noticed above is, accordingly, answered in favour of the appellants-plaintiffs and against the respondents-defendants.

The suit of the appellants-plaintiffs is thus, decreed and they shall be held entitled to preliminary decree of partition in respect of the plot bearing Nos.32/7, 32/28, 32/29 total measuring 1780 square yards which include plot No.28 as well and separate possession of half share of the aforementioned property by metes and bounds.

Decree sheet be prepared accordingly.

Appeal stands allowed.

17.08.2015

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**(AMIT RAWAL)
JUDGE**