

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

RSA No.2587 of 2013 (O&M).

Date of Decision: 06.10.2015.

Satish and others

....Appellants.

VERSUS

Hukam Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Ms. Vandana Sharma, Advocate for
Mr. Rajesh Lamba, Advocate for the appellants.

SNEH PRASHAR, J.

CM-6887-C-2013

This is an application filed under Section 151 of the Code of Civil Procedure praying for condonation of 926 days delay in refiling the appeal.

In view of the grounds mentioned in the application, delay of 926 days in refiling the appeal is condoned and the application is allowed.

RSA-2587-2013

1. This was regular second appeal filed by appellants-defendants No.1 to 3 Satish and others (hereinafter referred to as the “appellants”)

impugning the judgment and decree dated 28.01.2010 passed in Civil Suit No.1153 of 2009 by learned Civil Judge (Junior Division), Faridabad, vide which the suit for permanent injunction filed by plaintiffs-respondents No.1 to 3 Hukam Singh and others (hereinafter referred to as the “plaintiffs”) was decreed and the same was upheld by the first appellate Court vide judgment dated 28.04.2010.

2. The facts which need elaboration are that plaintiffs filed a suit for permanent injunction pleading that they alongwith late Narender and Balram (defendant No.4/proforma respondent No.4) are co-sharers in joint possession of gair mumkin gait comprised in Khewat No.216, Khata No.328, Khasra No.305 measuring 1 Kanal 19 Marlas, situated within the revenue estate of village Atali, Tehsil Ballabgarh, District Faridabad (hereinafter referred to as the “suit property”). The suit property is not a cultivable agricultural land, is surrounded by the 'abadi' of the village and has not been partitioned by metes and bounds amongst the co-sharers. They (plaintiffs), Narender (since deceased) and Balram have equal share in the property i.e. 1/5th share each. Balram had sold 6 Marlas of land to Satish and others (appellants) out of his 1/5th share vide sale deed dated 09.09.2004. Since the property is still joint, no co-sharer has a right to raise construction, change the nature of the suit property or occupy a particular portion to the exclusion of other co-sharers.

Asserting that the appellants were bent upon to raise construction without getting the suit property partitioned by metes and bounds, the plaintiffs pleaded that they had no option than to file the suit

and prayed for a permanent injunctive order restraining the appellants from doing so.

3. The appellants filed a joint written statement raising objections with regard to maintainability of the suit and locus-standi of the plaintiffs etc. Controverting the pleadings of the plaintiffs, they alleged that since the suit property is adjacent to the 'abadi'. They had purchased the same for constructing their residential houses and being owners have a right to do so. They also claimed that the co-sharers had already partitioned the suit property orally are in physical possession to the extent of their respective shares. Pleading that the suit had been filed with a motive to harass and humiliate them, they prayed for dismissal of the same.

4. Balram (defendant No.4) filed a separate written statement siding with the plaintiffs and reiterated that the appellants have no right to raise construction over any particular portion of the suit property.

5. On the rival contentions of the parties, following issues were framed:-

(1) Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP.

(2) Whether the suit of the plaintiff is not maintainable in the present form? OPD.

(3) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.

(4) Whether the plaintiff has not come to the court with clean hands? OPD.

(5) Relief.

6. Both the parties adduced evidence in support of their rival

contentions.

7. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court decreed the suit of the plaintiffs vide impugned judgment and decree dated 28.01.2010.

8. Appellants preferred an appeal against the judgment and decree dated 28.01.2010 which was dismissed by learned District Judge, Faridabad vide judgment and decree dated 28.04.2010.

9. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

10. The submissions made by Ms. Vandana Sharma, learned counsel representing the appellants have been considered.

11. Learned counsel for the appellants argued that it could not be disputed by the plaintiffs that Balram (defendant No.4) out of his 1/5th share in the suit property measuring 1 Kanal 19 Marlas had sold 6 Marlas of land to the appellants vide sale deed dated 09.09.2004. It was a valid and legal sale. The suit property is a non agricultural land and is surrounded by the 'abadi' of the village. As was admitted by plaintiff No.1 Hukam Singh, who appeared as PW1, the appellants had purchased the suit property for construction of a residential building. Having become co-owners in the suit property, the appellants have a right to raise construction on the portion of the land purchased by them. Learned counsel further pointed out that plaintiff No.2 Sunder Singh had also sold some land out of his share to Smt. Nirmala Devi wife of Ranbir Singh vide sale deed dated 03.03.2000 but she

was not impleaded as party to the suit. The suit property was mortgaged with Syndicate Bank, Dayalpur, District Faridabad as collateral security for repayment of a loan. It is only after payment of the loan to the bank that the suit property was released from mortgage and the possession was delivered to the appellants of the portion purchased by them. Being in exclusive possession of a portion of the suit property, appellant No.1 Satish had laid foundation of the house on the northern-western portion which was earlier in possession of their vendor Balram. Plaintiff No.1 Hukam Singh and his brother Sunder Singh (plaintiff No.2) had signed as attesting witnesses on the registered sale deed executed in favour of the appellants. As such, they were estopped from raising objection to the construction being raised by the appellants.

12. There is no force in the argument of learned counsel for the appellants. Admittedly, the appellants had purchased 6 Marlas of land out of 1/5th share of Balram (defendant No.4) vide registered sale deed dated 09.09.2004 and consequent to the same have become co-owners to the extent of 6 Marlas land in the suit property. It is a settled proposition of law that even when some specific portion is sold out of a joint land, it would be considered to be sale of share only unless it is proved that the vendor was in exclusive possession of that portion. In this context, reference is made to Mange Ram and others vs. Ram Chander, 2001(2) P.L.J. 441 (SC); Gajara Vishnu Gosavi vs. Prakash Nanasahed Kamble & others, 2010(1) Civil Court Cases 598 (S.C.); and Surja Ram vs. Birpal and others, 2001(1) P.L.J. 28. Even if there was a sale of specific portion of land to the

appellants, it would be construed only as sale of share in joint holding of the vendor with other co-sharers when there is nothing to prove exclusive possession of their vendor on that portion.

13. The appellants alleged that the suit property had been partitioned between the co-owners prior to sale of 6 Marlas land to them by one of the co-sharers namely Balram. As is apparent from the judgment of learned trial Court as well as of the first appellate Court, the appellants had failed to prove partition of the land between the co-sharers. As observed by learned trial Court, Ex.P4 is the Jamabandi for the year 2000-2001 in which the plaintiffs alongwith others are shown to be co-owners of Khasra No.305. In the Jamabandi for the year 2005-2006 Ex.DA tendered in evidence by the appellants, the plaintiffs alongwith the appellants are shown to be co-owners of Khasra No.305. Therefore, it is clear that as per the revenue record the suit property had not been partitioned amongst the co-sharers. When the suit property is still joint amongst the co-sharers, every co-sharer has an interest in every inch of the property. Every co-owner has a right to use the property in husband like manner not inconsistent with similar rights of other co-owners. Since the suit property continues to be joint property of the co-owners and the appellants had failed to prove severance of status of joint ownership, they have no right to raise construction on a specific portion of the suit property and thereby change the nature of the same. It is open to them to first seek partition of the joint property.

Thus, there being concurrent findings of learned trial Court as well as learned first appellate Court that the suit property is joint property of the appellants and the plaintiffs and that the appellants have no right to raise construction on any portion of the suit property without getting the same partitioned and the appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

06.10.2015
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