

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

RSA No. 3725 of 2013 (O&M)

Date of decision: 30.01.2015

Harnam Singh and another

.....Appellants

versus

Meja Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

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?

Present: Mr. Amit Arora, Advocate
for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff was decreed by the trial Court vide judgment and decree dated 14.09.2011. Appeal preferred against the said decree failed and was dismissed on 10.01.2013. This is how, defendants are 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 declaration that he was the owner in possession of half share in the property measuring 1 Kanal 17 Marlas, comprised in Khasra No.9//15 min Pahar situated in village Bachre, Tehsil & District Tarn Taran and also for possession of the property by partition of his share. By way of consequential relief, a decree for injunction restraining the defendants

from alienating the share of the plaintiff in any manner was also claimed. It was averred that plaintiff and defendant No.1 were real brothers and they jointly purchased a land 1 Kanal 17 Marlas pursuant to a sale deed dated 17.07.1973. The entire sale consideration was jointly paid by the plaintiff and defendant No.1, and thus both were owners in possession of half share each. They had jointly raised construction in the suit property. Likewise, mutation qua the suit land was also sanctioned in favour of plaintiff and defendant No.1. Plaintiff also had a residential house in village Sanghe and at times, he used to reside there and also even in the house that was constructed in the suit property. In May 2014, defendant forcibly occupied even the portion that was in possession of the plaintiff and despite requests, refused to restore possession and acknowledge his claim. It was further averred that defendant had already sold his half share in the property, thus the suit.

In defence, it was pleaded *inter alia* that plaintiff had no right, title or interest in the suit land as he had orally exchanged his share in the suit property with defendant in lieu of two residential houses of 4 ½ Marlas each situated in village Sanghe. Defendant had also relinquished his share in the ancestral house in favour of the plaintiff. Still further, it was maintained that the suit property was solely purchased by the defendant himself out of his earnings and plaintiff had not contributed anything therein. Likewise, even the construction was solely raised by the defendant.

In a separate written statement filed by defendant No.2, he also set out the same defence as was put forth by defendant No.1.

Trial Court, on a consideration of the matter in issue and the evidence on record, found that a certified copy of the sale deed dated 17.07.1973 Ex.P-1 and endorsement Ex.P-2 proved that the suit land was purchased by plaintiff and defendant No.1 in equal shares. Mutation No.1503, further proved that the suit property was mutated in the name of plaintiff and defendant No.1 being joint owners in possession. Plea set up by the defendant that pursuant to an oral partition between plaintiff and defendant No.1, share of the plaintiff in the suit land was transferred in favour of defendant Achhar Singh and in lieu thereof he relinquished his interest in the ancestral land alongwith two plots in favour of the plaintiff, remained unproved on record. Nothing was brought on record to prove the oral family settlement that was purported to have been arrived at between the parties. Resultantly, it was concluded that since the suit property was jointly purchased by the plaintiff and defendant No.1, it could well be presumed that even the construction was raised by them out of the joint account.

Accordingly, the suit was decreed and a preliminary decree qua half share of the plaintiff, for separate possession by way of partition was granted.

Being dis-satisfied with the said decree, defendants preferred an appeal. 1st Appellate Court, reviewed the matter in issue, evidence on record and, on an analysis thereof, found itself in concurrence with the view drawn by the trial Court and findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard the learned counsel for the parties at length and

perused the R.S.A. paper book.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex facie, the suit land was jointly purchased by plaintiff and defendant No.1 pursuant to a sale deed dated 17.07.1973 (Ex.P-1). Concededly, pursuant to Mutation No.1503, the suit property was mutated in the name of the plaintiff and defendant No.1 being joint owner in possession. Plea of the defendant that pursuant to an oral family partition, share of the plaintiff in the suit land was transferred in favour of defendant No.1 and in lieu thereof he relinquished his interest in the ancestral property and two other residential house at village Sanghe in favour of the plaintiff, which remained unsubstantiated on record. Nothing was brought on record to prove the oral family partition that was purported to have been arrived at between the parties. No date, month or a year, when the said family partition effected was either pleaded or proved. So much so, the properties in which the defendant had purportedly relinquished his interest in favour of the plaintiff were also not clearly depicted and specified. Position in the record of rights reflect parties to the suit to be joint owner in possession of the suit property in equal shares. Nothing was brought on record to show that the alleged family settlement was even reported to the Revenue Agency leave alone it was ever acted upon. That being so, apparently defendant failed to prove his defence. Leaned counsel for the appellant could not point as to how the conclusions that

were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, conclusion that have been already by both the Courts below, 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 in the present appeal. The same being devoid of merit is, accordingly, dismissed.

30.01.2015

Naveen

(ARUN PALLI)
JUDGE