

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

RSA No.4617 of 2013
Date of decision: 19.01.2015

Ashok

...Appellant

Versus

Anoop Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Pritam Saini, 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? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 17.04.2012. Appeal preferred against the said decree failed and was dismissed on 25.07.2013. This is how, plaintiff 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 a suit filed by the plaintiff, he prayed for a decree for mandatory injunction, directing the defendant to vacate the suit property, comprised in khasra No.66//7/2 (1-12), measuring 0 kanal 9 marla, depicted by letters ABCD in the site plan, appended with the plaint. Further, a decree for permanent injunction was also claimed, restraining defendant from raising any sort of construction over the suit property. It

was averred that plaintiff had purchased the suit land, vide a registered sale deed dated 26.06.2006. Accordingly, mutation No.3408 dated 12.07.2008, was sanctioned in his favour. Plaintiff constructed his residential house over the said property and he was shown as owner thereof in the record of rights. It was maintained that around 3/4 years ago, defendant started residing in the house of the plaintiff on the pretext that he would have a separate house constructed for himself and would then, vacate the suit property. As defendant happened to be the real brother of the plaintiff, he was permitted to reside in the suit property. But as defendant was bent upon to raise further construction in the said house and change its nature, thus, the suit.

In defence, it was pleaded, inter alia, that Rattan Singh was the grandfather of the parties and had four sons and three daughters. The land measuring 1 kanal 12 marlas, comprised in khasra No.66/7 min (1-12), situated at village Kharak Kaur, was purchased by him from one Partap Singh, vide a registered sale deed dated 27.10.1972. He had constructed three houses over the said land. Out of the said three houses, Madan Pal Singh i.e. his son has been residing in one house, in the second house his second son Chanderpal Singh was residing and the third house was given to Dharampal Singh i.e. father of the parties. A family settlement was alleged to have taken place about 15/16 years ago

between the parties and pursuant thereto half portion of the house in question was fallen to the share of the defendant and resultantly, he has been residing therein. The electricity connection installed in the said house was in the name of the defendant, and even ration card and voter-list showed defendant to be residing in the said house. It was maintained that the suit property was ancestral in the hands of Dharampal Singh and thus, defendant had a right therein by birth. And, therefore, Dharampal Singh had no right to alienate the same except for a legal necessity. Sale deed, if any, executed by Dharampal Singh or Smt. Beero, was wholly illegal, void and fictitious document.

Trial court, on a consideration of the matter in issue and evidence on record, found that Dharampal Singh and Smt. Beero had indeed executed a sale deed in favour of plaintiff, namely, Ashok, qua their 2/7th share, which they possess in the suit property, comprised in khasra No.66//7/2 (1-12), measuring 1 kanal 12 marlas. Sale deed (Ex.P1) and mutation (Ex.P2) proved this position on record. It was further observed that an analysis of sale deed (Ex.P1) unraveled that Smt. Beero as well as Dharampal Singh were owners of 2/7th share in the land measuring 1 kanal 12 marlas, pursuant to Farad Badar sanctioned on 14.06.2006. Farad Badar further found mentioned in Ex.DD i.e. mutation of inheritance sanctioned after death of mother of Dharampal and Beero and

wife of Rattan Singh. Accordingly, it was observed that Ex.D9, Ex.D10 & Ex.D11 revealed that the suit property was originally purchased by Rattan Singh from one Partap Singh, pursuant to a sale deed dated 27.10.1992. Post death of Rattan Singh, mutation of inheritance qua his estate was sanctioned in favour of his heirs in equal shares. Accordingly, his widow Makhtuli, his four sons, namely, Madan Pal, Gaje Singh, Dharampal, Chander Singh and his three daughters, namely, Surujbai, Imrati and Beero, inherited the same and were thus owners to the extent of $1/8^{\text{th}}$ share each. Subsequently, on death of Makhtuli Devi, her heirs became owners of the land measuring 1 kanal 12 marlas to the extent of $1/7^{\text{th}}$ share each. Dharampal and Beero sold their $1/7^{\text{th}}$ share each, in favour of the plaintiff-Ashok, pursuant to a sale deed, dated 26.06.2006 (Ex.P1). Thus, the question to be determined was whether Dharampal and Beero were ever in exclusive possession of the suit property. And whether they further transferred possession of the exclusive portion out of the land measuring 1 kanal 12 marlas, in favour of the plaintiff, vide sale deed (Ex.P1). On a consideration of the sale deed dated 26.06.2006, it was observed that there was not any reference to the house in question constructed therein. So much so, it was not recited in the sale deed that Dharampal and Beero were in exclusive possession of the house in question. That being so, it was concluded that neither plaintiff

nor his vendors were in exclusive possession of the suit property to the exclusion of other heirs of Rattan Singh. As Dharampal and Beero had sold their 1/7th share each, in favour of the plaintiff, thus, the other heirs of Rattan Singh were still the co-sharers in the land measuring 1 kanal 12 marlas, to the extent of their respective shares. And thus, the property was still joint between the parties. Still further, sale deed (Ex.P1) did not show that the room, that was possessed by the defendant, had fallen to the share of the plaintiff and thus, entitling him to seek possession, though in the garb of a decree for mandatory injunction. Plaintiff failed to plead or prove any family settlement to substantiate that the suit property i.e. 9 marla, had fallen to his share ever. Concededly, the other co-sharers were not arrayed as a party in the suit, thus, the suit was bad even on account of misjoinder of necessary parties. That being so, it was concluded that only remedy available to the plaintiff was to seek partition. As regards the decree for permanent injunction, that was being claimed by the plaintiff, it was observed that he failed to prove on record as to what construction was being raised by the defendant and on which portion of the suit property, and as to how, it would affect the interest. Resultantly, the injunction prayed for was also denied. Since, it was observed that the suit for mandatory injunction, in the facts and circumstances of the present case, was not maintainable and in order to

evade the court fee, the plaintiff made a futile attempt to claim mandatory injunction for possession. Therefore, it was held that the suit was bad for want of proper court fee. Resultantly, the suit was dismissed.

Being aggrieved against the said decree, plaintiff preferred an appeal. First 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 the findings recorded in support thereof. Accordingly, the appeal was dismissed.

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. 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. Needless to assert, for plaintiff to be entitled to a decree for mandatory injunction qua an area measuring 9 marlas, out of land measuring 1 kanal 12 marlas, comprised in khasra No.66//7/2 (1-12), he was required to prove that he indeed was the absolute and exclusive owner of the said portion. And

the defendant was put in possession of the said portion merely as a licensee. Concededly, a land measuring 1 kanal 12 marlas, as referred to above, was owned by the grandfather of the parties, namely, Rattan Singh. Post death of Rattan Singh, his widow, four sons and three daughters had succeeded to his estate to the extent of $1/8^{\text{th}}$ share each. Likewise, subsequently to death of widow of Rattan Singh, namely, Makhtuli, her heirs became owners of land measuring 1 kanal 12 marlas, to the extent of $1/7^{\text{th}}$ share each. Indisputably, Dharampal and Smt. Beero, pursuant to a sale deed dated 26.06.2006, sold their $1/7^{\text{th}}$ share each in a land measuring 1 kanal 12 marlas to the plaintiff. Of course, he became owner of $2/7^{\text{th}}$ share i.e. 9 marlas in a land measuring 1 kanal 12 marlas. Thus, at best, he was a co-sharer along with other three sons and two daughters of Rattan Singh, who concededly were the co-sharers. Nothing was brought on record to even remotely suggest that the land measuring 1 kanal 12 marlas was ever partitioned between the heirs of Rattan Singh. Plaintiff failed to prove that even his vendors, namely, Dharampal and Beero were ever in exclusive possession of the portion, he was claiming mandatory injunction for. The property being not partitioned, plaintiff could not claim possession of a specific portion, out of a land measuring 1 kanal 12 marlas, least by a suit for mandatory injunction. Concededly, plaintiff failed to array the other co-

sharers as party to the present lis. That being so, dismissal of the suit of the plaintiff was the necessary and the inevitable consequence. Learned counsel for the appellant could not point out 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, 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.

January 19, 2015
Rajan

(Arun Palli)
Judge