

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

RSA No. 3222 of 2014

Date of decision: October 19, 2015

HARJIT SINGH

.....APPELLANT

VERSUS

RAVINDER SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the 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. Sanjay Vashisth, Advocate
for the appellant.

JASPAL SINGH, J.

By virtue of this appeal, the plaintiff has challenged the judgement and decree dated November 29, 2013 passed by Additional District Judge, Patiala whereby the judgment and decree dated May 01, 2013 passed by Civil Judge, Jr. Division, Patiala was upheld vide which the suit of the plaintiff-appellant for declaration and permanent injunction was dismissed.

2. Briefly stated, the claim set up by the plaintiff-appellant is that he is the son of Joginder Singh and great grandson of Harnam Singh, who purchased the property in suit, in which the parties are owners to the extent of ¼ share. Defendant No.3 is also the great grandson of Harnam Singh whereas defendants No. 1 and 2 are the grandsons of Harnam Singh. The suit property is the ancestral property and is undivided joint Hindu family

property, which is being used by defendant No.1 in its entirety after the demise of Tara Singh and Joginder Singh. Since, defendant No.1 has been using the share of other share holders, without any right, title or authority, thus, he is liable to make the payment of mesne profits for using the fruits thereof. When defendant No.1 decline to make the payment of mesne profits as well as to admit the claim of the plaintiff with regard to ownership, he was served with a legal notice dated April 24, 2007, in response to which defendant No.1 partly admitted his claim. It has further been averred that no family partition of the suit property had ever taken place amongst the parties. Since, defendant No.1 threatened to dispose of the suit property, the plaintiff was constrained to file a suit for declaration and permanent injunction. The plaintiff claim himself to be the owner of House B-21/56 Nabha Gate, Patiala as well as the shop in front of the said house to the extent of $\frac{1}{4}$ share besides the mesne profits.

2. Defendant No.1 resisted the suit and filed written statement raising preliminary objections *inter alia* on the ground that suit is liable to be rejected under Order 7 Rule 11 CPC; that the suit is not maintainable; that the plaintiff is estopped by his act and conduct from filing the present suit under the principles of estoppel; and that the suit is not properly valued. However, on merits the relationship between the parties has been admitted but it has been specifically pleaded by defendant No.1 that no family partition ever took place between Tara Singh and Narata Singh on January 07, 1993, which was duly registered with the deed writer. According, to the said partition, house No. B-21/526 fell into the share of father of defendant No.1 whereas house No.B-21/527 had fallen to the share of Narata Singh

along with house located at village Tohra. House No. B-21/526 was inherited by defendant No.1 through Will executed by his father and since then he is residing therein. The plaintiff has no right, title or concern with the suit property. It has further been unfolded that earlier a civil suit filed by Sukhwinder Singh was also decided in favour of defendant No.1 in respect of the above said house. Moreover, defendant No.1 got sanctioned the site plan of the house in dispute from the Municipal Corporation, Patiala in the name of Tara Singh son of Harnam Singh, which was subsequently inherited by him after the demise of his father. All other averments have been denied alleging the same to be wrong.

3. After hearing learned counsel for the parties and appraisal of evidence brought on record by the parties in support of their respective pleadings, the suit of the plaintiff was dismissed vide impugned judgment dated May 01, 2013 passed by Civil Judge, Junior Division, Patiala.

4. Aggrieved against the aforesaid judgment, the appellant-plaintiff preferred Civil Appeal No.0001348 of 30.05.2013, which stood dismissed vide judgment and decree dated November 29, 2013 passed by the Additional District Judge, Patiala.

5. It was only, thereafter, the plaintiff-appellant approached this Court by way of instant regular second appeal.

6. After hearing the learned counsel for the appellant and scrutinizing the impugned judgments and decree rendered by both the courts below, it emerges that appellant-plaintiff has filed suit for declaration to the effect that he is the son of Joginder Singh, great grand-son of Harnam Singh, who had purchased the suit property vide sale deed dated November

19, 1919 (Ex.P1). It is also an admitted fact that the plaintiff is not in possession of any part of the suit property, which is stated to be in possession of respondent-defendant No.1.

7. Here, it would be pertinent to mention that the plaintiff while appearing in the witness-box as PW-1 before the Id. Trial court has categorically admitted that he is living with his family in Palwal for the last more than 40 years and as per his knowledge no partition of the suit property had ever taken place. He has feigned ignorance about the partition of the disputed property located at Nabha Gate. He is also not aware if his father had ever received amount. But one thing is admitted that his grandfather was residing at Nabha Gate along with defendant No.1- Ravinder Singh, who used to look after and take care of his grandfather Tara Singh.

8. On the other hand, there is a specific stand of defendant No.1 that family partition took place on January 07, 1993 in between his father Tara Singh and uncle Narata Singh, which was also reduced in writing by the Deed Writer. As per the said family partition, house in dispute fell to the share of Tara Singh, his father whereas the other portion fell to the share of Narata Singh his uncle. Not only this, even Tara Singh, father of defendant No.1 executed a will in his favor, on the basis of which, defendant No.1 has become exclusive owner in possession of the suit property. Copy of family partition arrived at between Tara Singh and Narata Singh has been duly proved on record as Ex.D-2. Moreover, there is a simple assertion of the plaintiff that the suit property is joint ancestral Hindu family property. There is not an *iota* of evidence to prove this fact what to talk of adducing any

cogent and convincing evidence. In this regard, even the plaintiff has failed to place on record any pedigree-table.

9. It is well settled that plaintiff has to stand at his own legs to prove his case and he cannot take advantage of the weakness of defence. In the case in hands, plaintiff-appellant has miserably failed to prove that he has got any right, title or interest in the disputed property. Rather, the same is proved to be in the ownership and in possession of defendants No. 1.

10. Thus, impugned judgment and decree dated May 01, 2013 passed by the Civil Judge, Junior Division, Patiala and upheld by lower appellate court vide judgement and decree dated November 29, 2013, do not call for any interference by this Court. The same are absolutely in consonance with the evidence available on file and settled canons of law. There is no infirmity, illegality or impropriety in the findings recorded by the ld. trial court and upheld by the lower appellate court.

11. Instant appeal being devoid of any merits is dismissed leaving the parties to bear their own cost.

October 19, 2015

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**(JASPAL SINGH)
JUDGE**