

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

RSA No.986 of 2015 (O&M).
Date of Decision: 16.11.2015.

Parshotam Mohan Lal

....Appellant.

VERSUS

Jagdish Chander and another

....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: Mr. Suresh Kumar Aneja, Advocate for the appellant.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellant-plaintiff Parshotam Mohan Lal (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 07.05.2010 passed in Civil Suit No.111-1 of 21.5.2005/6.6.2008 by learned Civil Judge (Junior Division), Fazilka, dismissing the suit for permanent injunction filed by appellant against respondent-defendant Jagdish Chander (hereinafter referred to as the “respondent”), which was upheld by the first appellate Court vide judgment dated 24.07.2012.

2. The relevant are recapitulated hereunder:-

Appellant Parshotam Mohan Lal filed a suit for permanent injunction seeking to restrain respondent-defendant Jagdish Chander from illegally entering upon the land or raising construction over the area measuring 2 Marlas 6 Sarsai comprised in Khasra No.194/2/3/1(11-8), Khewat No.94/89, Khatoni No.191 situated in village Panchawali, Tehsil Fazilka (hereinafter referred to as the “suit property”).

The appellant pleaded that after the death of his father Murari Lal Chugh, he alongwith his brothers Narinder Mohan Lal, Varinder Mohan Lal, Surinder Mohan Lal and others became joint owners of the suit property. The suit property was divided amongst the co-owners and in the partition the share of heirs of Late Murari Lal was kept joint. In order to resolve the longstanding dispute and differences between the heirs of Late Murari Lal, Sohan Lal, K.L. Pupneja and S.C. Jasuja, Advocates were appointed as the Arbitrators, who gave their Award and a decree in terms of the Award was passed and proceedings for making the Award a Rule of the Court were pending. It was alleged that in the Award the suit property was kept common amongst him and his brothers.

It was further the plea of the appellant that his brother Surinder Mohan Lal was never in exclusive possession of the suit property and in order to cause wrongful loss to him and his other brothers, he had illegally and unlawfully without notice to them sold land measuring 2 Marlas 6 Sarsai out of the suit property to Jagdish Chander-respondent No.1 vide sale deed dated 01.03.2005. Assailing the sale deed as illegal and pleading that

he is not bound by the said sale deed and further that respondent No.1 has no right to enter upon the suit property or raise construction on the same by getting it partitioned by metes and bounds, the appellant prayed for a permanent injunctive order against him.

3. Respondent No.1 appeared and contested the suit. He pleaded that he is owner in possession of the plot purchased by him from Surinder Mohan Lal Chugh vide sale deed dated 01.03.2005 and a mutation on the basis of the said sale deed had been sanctioned. Raising legal objections with regard to locus standi of the appellant to file the suit and the cause of action pleaded, he submitted that there were five plots in Chugh Street, Fazilka and during partition the plot purchased by him had fallen to the share of Surinder Mohan Chugh, whereas the other plots fell to the share of the appellant and his brothers who raised the boundary wall around their respective plots. Denying all claims of the appellant, he prayed for dismissal of the suit.

4. On the rival contentions of the parties, issues were settled. Both the parties adduced evidence to prove the stand taken by them.

5. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court finding that all joint properties amongst the appellant and his brothers including Surinder Mohan Chugh had been partitioned and they were holding exclusive possession of different chunks of the properties and further that the defendant is shown to be in possession of the suit property in the revenue record on the basis of the sale deed executed in his favour,

dismissed the suit of the appellant.

6. An appeal was preferred by the appellant against the judgment and decree dated 07.05.2010 passed by learned trial Court which was dismissed by learned Additional District Judge, Ferozepur vide judgment and decree dated 24.07.2012.

7. Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

8. The submissions made by Mr. Suresh Kumar Aneja, learned counsel representing the appellant have been considered.

9. Learned counsel for the appellant argued that the Courts below had failed to appreciate and consider the document Ex.P7 i.e. list of properties which was part of Arbitration proceedings and according to which suit property was still joint property of the appellant and his brothers. Another important document is Ex.P2, a public notice got published in a newspaper by Surinder Mohan Lal wherein he too admitted that the suit property is still joint and has never been partitioned. Learned counsel also contended that an application under Order 41 Rule 27 of the Code of Civil Procedure filed by the appellant alongwith the appeal before the first appellate Court seeking permission to produce additional evidence to prove the document Ex.P7 was not considered by the first appellate Court and on that ground the judgment and decree passed by the said Court is erroneous and not sustainable under law.

10. By way of present suit, the appellant assailed the sale deed dated 01.03.2005 executed by his brother Surinder Mohan Lal in favour of

respondent No.1 Jagdish Chander on the ground that the suit property was joint property between him and his brothers and had never been in exclusive possession of his brother Surinder Mohan Lal, therefore, he could not transfer better rights than he himself possessed. However, surprisingly, he did not implead his brother Surinder Mohan Lal as party to the suit and only respondent No.1-vendee was impleaded as party and an injunctive order was sought to restrain him from occupying the suit property and from raising construction over the same whereas as noticed by the Courts below, Jamabandi for the year 2003-04 (Ex.D4) reflects the entry of mutation no.8832 sanctioned in favour of respondent No.1 Jagdish Chander on the basis of the sale deed executed in his favour by Surinder Mohan Lal and he was shown to be in possession of the suit property. Respondent No.1 claimed that he was handed over possession of the suit property by his vendor at the time of execution of the sale deed. In that context also, impleading of Surinder Mohan Lal as party to the suit was necessary. On this sole ground of non-impleading of the necessary party, the suit of the appellant deserved to be dismissed.

11. Otherwise also, there is concurrent finding of both the trial Court and the first appellate Court that the suit property sold by Surinder Mohan Lal to respondent No.1 had fallen to his share in a family partition between the appellant and his brothers. Findings of learned first appellate Court are as under:-

“After considering the rival contentions of the parties, I am of the view that there is no merit in this appeal and as such the same deserves dismissal. Ex.D1 is the sale deed dated

22.12.1999 executed by appellant Parshotam Mohan Lal vide which he sold specific portion out of the suit property in favour of Mohan Lal and others and it has been specifically said in the sale deed that the property covered under that sale deed has fallen to his share and in the share of Narinder Mohan Lal and Varinder Mohan Lal in family partition. Now the appellant cannot be allowed to plead that suit property has not been partitioned between him and his brothers. He cannot be allowed to blow hot and cold in the same breadth. Moreover there is absolutely nothing on the file to show that it was the appellant who is in exclusive possession of the suit property. As per the case of the appellant himself, suit property was jointly owned by his brothers. Much reliance has been placed on the file by the learned counsel of the appellant on Ex.P7, which is photostat copy containing list of properties. The said plot is not connected with the suit property because the suit property has been described in khasra numbers, whereas none of the properties mentioned in the list Ex.P7 is in khasra numbers. Moreover it has been rightly held by the learned lower court that Ex.P7 has not been proved on the file as per law. Therefore, Ex.P7 is of no help to the appellant.”

12. When the appellant himself, his other brothers and mother had sold specific portion out of the suit property to one Mohan Lal vide registered sale deed dated 22.12.1989 (Ex.D1) and had handed over possession of the property sold to the vendee, there remained no scope to believe the contention of the appellant that the suit property was still joint among the legal heirs of deceased Shri Murari Lal. When the alleged list of property Ex.P7, on which the appellant had relied upon, could not be connected to the suit property which was described in khasra numbers, the

said document in any case was of no help to the appellant. Otherwise, also the fact that the learned counsel representing the appellant submitted arguments on merits of the appeal without persuing decision of his application for additional evidence, if any, the appellant cannot now say that it was not disposed of.

13. In any case, there is substantive and convincing evidence for proving family settlement/ partition of the suit property amongst the appellant and his family members on the basis of which the heirs were holding different chunks of land. The judgment dated 30.09.2008 (Ex.D1) passed by learned Additional Civil Judge (Senior Division), Fazilka alongwith the Award dated 18.10.1987 Ex.D3 which was made Rule of the Court, established that there had been settlement amongst the appellant and his brothers for dividing their joint properties.

Thus, finding no merit in the appeal, the same is hereby dismissed.

CM-2928-C-2015

This appeal was filed much after expiry of the limitation period i.e. after a delay of 813 days. Alongwith the appeal, an application under Section 5 of the Limitation Act for condonation of delay was filed, but since there is no merit in the appeal, there is also no ground for condoning such long delay in filing the appeal and the application is dismissed.

(SNEH PRASHAR)
JUDGE

16.11.2015
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