

**In the High Court of Judicature for the States of Punjab & Haryana, at
Chandigarh**

Regular Second Appeal No. 4116 of 2014(O&M)

Date of Decision: January 14, 2015

Sohan Lal

----Appellant

Versus

Parmeshwari Devi and others

----Respondents

Coram: Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. S.S. Brar, Advocate for the appellant

1. Whether Reporters of local papers may be allowed to see the judgment?

Yes

2. To be referred to the Reporter or not? **Yes**

3. Whether the judgment should be reported in the Digest? **Yes**

Mahavir S. Chauhan, J.

Civil Miscellaneous No. 9578-C of 2014:

Heard on the application for condonation of delay.

02. In view what has been argued and the circumstances enumerated therein, which are supported by appellant-applicant's affidavit, coupled with the fact that the delay is minimal, the application is allowed and delay in filing the appeal is condoned.

Regular Second Appeal No. 4116 of 2014:

03. Murli Ram (Defendant No. 14 before the trial court) approached Assistant Collector, Grade-I, Fazilka for partition of land measuring 73 Kanals and 7 Marlas, as fully described in the heading of the plaint, which was jointly owned by the parties to the lis. The application was accepted vide order dated July 30, 1997. Sohan Lal and Sajan Ram (plaintiff and defendant No. 15, respectively) assailed order dated July 30, 1997 in appeal which was dismissed by Collector, Fazilka vide order dated October 17,

1994. Sohan Lal (plaintiff) preferred a revision petition to challenge order dated October 17, 1994. It was also dismissed by the Commissioner vide order dated August 31, 1998. Sohan Lal (plaintiff) also failed before the Financial Commissioner. During the pendency of partition proceedings Smt. Jattan (defendant No. 18) and Murli Ram (defendant No. 14) sold their shares in the joint land to Sohan Lal (plaintiff) vide sale deeds dated January 06, 1993 and June 21, 2000, respectively. Sohan Lal (plaintiff) then filed Civil Suit No. 1341-1 of 2003/2011 before the court of learned additional Civil Judge (Senior Division) Fazilka (for short 'the trial Court') praying for a decree of declaration that the orders passed by the revenue authorities in the partition proceedings were wrong and illegal and he was owner in possession of land measuring 29 Kanals 07 Marlas, as per description given in the heading of the plaint; and for a decree of perpetual prohibitory injunction restraining the defendants from dispossessing him from aforestated land measuring 29 Kanals 07 Marlas. Raj Kumar and Pirthi Raj (Defendants No. 16 and 17, respectively) contested the suit. Learned trial court framed issues, allowed the parties to adduce evidence, appraised the evidence so produced by the parties in the light of submissions made at the bar and vide judgment/decree dated July 19, 2011 dismissed plaintiff's suit holding that jurisdiction of the Civil Court was barred. Civil Appeal No. 115 of 2011 brought by the plaintiff to challenge judgment/decree dated July 19, 2011 of the learned trial court has been dismissed by learned Additional District Judge, Ferozepur ('first appellate court' - for short) vide judgment/decree dated December 20, 2013.

04. Unsuccessful plaintiff is now in regular second appeal to assail judgment/decree dated December 20, 2013 of the learned first appellate

court.

05. I have examined the judgments recorded by the courts below in the light of the submissions made by learned counsel for the appellant.

06. Learned counsel for the appellant argues that the appellant has proved on record sale deed dated January 06, 1993 as Exhibit P3 and endorsement regarding its registration as Exhibit P4, and sale deed dated June 20, 2000 and endorsement of its registration as Exhibits P1 and P2, respectively, by examining Hari Chand Makkar (PW3) and Om Parkash (PW2) and his possession over the land measuring 29 Kanals 07 Marlas is admitted by the contesting defendants and, as such, he is entitled to the declaration and injunction prayed for, as the defendants are out to dispossess him from the land in his possession as its owner, but the courts below have non-suited him on an imaginary ground saying that jurisdiction of the Civil Court is barred.

07. No other or further point has been urged.

08. Facts are not in dispute. Still It may be recapitulated that the property amongst the parties to the lis was joint and partition proceedings commence in or before the year 1993 and culminated after the year 1998 while sale deed, Exhibit P3 is dated January 06, 1993 – it came into being during the pendency of partition proceedings and sale deed, Exhibit P1, was executed on June 20, 2000, i.e., after revision petition was dismissed by the Commissioner. Incidentally, date of dismissal of second revision by the Financial Commissioner is not coming forth. Be that as it may, both these sale deeds have to abide the final outcome of the partition proceedings because it is well settled proposition of law that purchaser of a coparcerner's undivided interest in joint family property is not entitled to possession of

what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he has purchased. His right to possession would date from the period when a specific allotment is made in his favour [per **Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain**, (1954) SCR 177, 188, **M.V.S. Manikayala Rao v. M. Narasimhaswami**, (1966) 1 SCR 628: AIR 1966 SC 470, **Ramdas v. Sitabai**, (2009) 7 SCC 444 and **Ram Murti Sharma & Anr. V. Prem Kumar & Ors.**, 2011(2) Civil Court Cases 570-P&H]. The appellant herein, in the garb of the instant suit, in fact, wants to retain possession of parts of the suit property which, prior to partition proceedings were in his occupation and that of his vendors and thereby circumvent the outcome of partition proceedings. Such an effort has to be deprecated because allowing such an endeavour to succeed would amount to undoing effect of Section 158 of Punjab Land Revenue Act which bars jurisdiction of Civil Court in respect of partition proceedings, as also the judgments referred to hereinabove.

09. Further, findings recorded by the courts below are pure findings of fact.

10. As a natural consequence of what has been said and discussed in the foregoing paragraphs and the fact that the appeal is not shown to involve a substantial question of law, impugned judgment/decreed dated December 20, 2013 passed by the learned first appellate court is maintained and affirmed and the appeal is found to be bereft of any substance and is, therefore, dismissed *in limine* with costs throughout.

Civil Miscellaneous No. 9579-C of 2014:

19. Main appeal having been dismissed *in limine* this application seeking stay of operation of impugned judgment/decreed is rendered infructuous and is disposed of accordingly.

(Mahavir S. Chauhan)
Judge

January 14, 2015
ad hikari