

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4617 of 2014 (O&M)
Date of Decision: March 03, 2015

Kuldeep Kumar

...Appellant

Versus

Ramesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Viney Saini, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Kuldeep Kumar has filed this regular second appeal against Ramesh Kumar, Purshottam, Jaipal and Sanju respondents-plaintiffs and Mukesh, Chahat and Seema respondents-defendants, challenging the judgment and decree dated 05.09.2011 passed by learned Addl. Civil Judge (Senior Division), Ambala vide which the suit for exclusive possession filed by Ramesh Kumar and Smt.Usha was decreed and judgment and decree dated 19.02.2014 passed by learned Addl. District Judge, Ambala, vide which appeal filed by Kuldeep Kumar appellant and Seema Devi was partly allowed.

The brief facts of the case are that Ramesh Kumar and Usha plaintiffs filed a suit for exclusive possession by way of partition against Kuldeep Kumar, Ashok Kumar, Seema Devi, Mukesh and Chahat in respect of house No.751/32 and 751/33. It is the case of the plaintiffs that plaintiff No.1 Ramesh Kumar and defendants No.1 and 2 (in plaint) are sons of late Sh.Sarwan Kumar, who was the

owner of House No.751/33 whereas plaintiff No.2 Usha, is daughter of Sarwan Kumar and defendants No.3A to 3C i.e. Seema Devi, Mukesh and Chahat are daughter-in-law and grandsons of Sarwan Kumar. The house was purchased by Sarwan Kumar vide registered sale deed dated 6.6.1959 in the shape of plot and then house was built by him. House No.751/32 was in the ownership of Smt.Bachni Devi wife of Sarwan Kumar and plaintiff No.1 Ramesh Kumar, which was purchased in the shape of plot vide sale deed dated 24.11.1962 and house was built on the same and as such, the house No.751/32 is owned by Ramesh Kumar to the extent of $\frac{1}{2}$ share and rest $\frac{1}{2}$ share is in the ownership of plaintiff No.2 and defendants. Similarly, house No.751/33 is owned by the parties in equal shares because Sarwan Kumar died on 13.04.2002 and Smt.Bachni Devi died on 17.04.2006. As such plaintiff No.1 is the absolute owner of house No.751/32 to the extent of $\frac{1}{2}$ share and $\frac{1}{5}^{\text{th}}$ share of remaining half, whereas plaintiffs and defendants are the owners of $\frac{1}{5}^{\text{th}}$ share in the house No.751/33. Plaintiff No.2 and defendant are also the owners with plaintiff No.1 to the extent of $\frac{1}{5}^{\text{th}}$ share of House No.751/32 of remaining half share. It is also the case of the plaintiffs that till date no partition took place between the parties and parties to the suit except plaintiff No.2, are residing in house No.751/32 and 751/33 jointly. Immediately, after the death of mother of the parties, defendants No.1 and 2 started interfering in the possession of plaintiff No.1, who is living in the house as owner.

On the other hand, the case of the defendants is that the

plaintiffs are neither the owners nor in possession of the suit property. The defendants are owners-in-possession since January, 1993. The plaintiffs have no share in suit property. The oral family settlement took place between the plaintiffs, defendants, mother and father of the plaintiffs and defendants No.1 and 2 in January 1993, vide which the defendants became exclusive owners of the suit property. It is also the case of the defendants that the suit property, which is only the residential house of the answering defendants-respondents, was purchased when the plaintiffs were of tender age and they were not doing anything. The suit property was purchased long back by Sarwan Kumar. The plaintiffs or Bachni Devi did not pay anything for the purchase of the suit property or for the construction of the house. In the month of May 1992 and January 1993, plaintiff Ramesh Kumar and Smt.Bachni Devi tried to sell the suit property firstly to Amar Nath and then to Ram Sarup and they received earnest money of ₹46,500/- and executed sale agreements respectively dated 26.05.1992 and 18.01.1993. It is also stated that in fact, the defendant and Sarwan Kumar were in possession of this house and were residing in the same. When Sarwan Kumar and defendants came to know that Ramesh Kumar and Bachni Devi trying to sell the house, they objected to it and oral family settlement took place between Ramesh Kumar and the defendants, Bachni Devi and Sarwan Kumar regarding the suit property.

It is also the case of the defendants that as per the family settlement, the defendants paid the amount of earnest money to the

proposed purchasers which they had paid to Ramesh Kumar and Bachni Devi. The defendants are exclusive owners of entire suit property continuously since January, 1993.

The parties produced the evidence. Learned Addl. Civil Judge (Senior Division), Ambala vide judgment and decree dated 05.09.2011 decreed the suit of the plaintiff. A preliminary decree is passed in favour of the plaintiffs by virtue of which, plaintiff Ramesh Kumar is entitled to the possession of the suit property bearing No.751/32 to the extent of $\frac{1}{2}$ share and in addition to this, he is also entitled to $\frac{1}{4}$ th share in this property, which was owned and possessed by his mother Smt.Bachni Devi and the plaintiff No.2 is entitled to possession by way of partition of the property to the extent of $\frac{1}{4}$ th share in this property and the plaintiffs are further entitled to $\frac{1}{4}$ th share each in the suit property bearing No.751/33.

Defendants Kuldeep Kumar and Seema filed appeal before learned Addl. District Judge, Ambala, which was partly allowed and it was ordered that plaintiff Ramesh Kumar is entitled to possession of the suit property No.751/32 to the extent of $\frac{1}{2}$ share and in addition to that, he is also entitled to $\frac{1}{4}$ th share in the remaining $\frac{1}{2}$ share of Smt.Bachni Devi along with parties to the suit. It is further held that the parties to the suit are having $\frac{1}{4}$ th share each in the suit property bearing No.751/33 earlier owned by Sarwan Kumar on the basis of sale deed dated 6.6.1959.

Both the Courts have given concurrent findings of fact by not believing the family partition. There is no dispute as regarding

house No.751/32. The ownership to the extent of half share is in favour of the Ramesh Kumar and half share in favour of Bachni Devi and as regarding suit property No.751/33, as per the sale deed, Sarwan Kumar was the owner of that property. There is not an *iota* of cogent evidence on record to support the oral family settlement/partition by any documentary evidence. This oral family partition or giving up the claim by Ramesh Kumar and Bachni Devi in the house, has not been entered into the Municipal record etc.

Again, there is no cogent evidence on the record to show that the sale deed in favour of Ramesh Kumar and Smt.Bachni Devi is *benami* etc. and they have not contributed to it. No date and month has been given as to when the family partition took place. There are no particulars of family partition as to where it has taken place and who were present at that time. There is nothing on the record to show that the property was ever partitioned by way of metes and bounds. The mere oral statement without any cogent documentary evidence does not prove the family settlement. There is no cogent evidence on the record that Ramesh Kumar and Smt.Bachni Devi ever given up their claim.

The perusal of the record shows that findings given by the Courts below are correct, as per law and do not require any interference from this Court.

As no substantial question of law arises in the present regular second appeal, therefore, the same is dismissed.

March 03, 2015

Vgulati

**(INDERJIT SINGH)
JUDGE**