

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3845 of 1987 (O&M)

Date of Decision : 17.08.2016

Ram Rattan and another

....Appellants

Versus

Ram Chand Dev Raj and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Bansal, Advocate
for the appellants.

Mr. Adarsh Jain, Advocate
for respondents.

Surinder Gupta, J.

Plaintiffs-appellants filed suit seeking the relief of possession of 55½ sq. yards of suit building adjoining the shop of plaintiffs on eastern side of the shop.

2. Case of plaintiffs, in brief, is that the suit property, as fully defined in headnote of plaint, originally belonged to Kirpa Ram and Mukandi Lal. They mortgaged the same with Atma Ram, Nandu Mal and Shiv Ram, all residents of Sirhind Mandi. Share of Atma Ram was inherited by Ram Gopal and Khushi Ram to the extent of 2/7th share, Vidya Parkash son of Daya Ram to the extent of 2/7th share. Pyare Lal inherited 6/35th share of Nandu Mal while Ranbir Kumar and Inderjit sons of Bhagwan Dass inherited 4/35th share and Shiv Ram son of Harbhej Mal inherited 1/7th share from Nandu Mal. Said Shiv Ram mortgaged 1/7th share with Munshi Bahajudeen son of Nazamudeen for a consideration of ₹3214 through mortgage deed on 17.01.1936 i.e. 4 *Maghar Smatt* 1992.

3. Plaintiffs are in possession of 1/7th share of Munshi Bahajudeen as tenant and were paying rent to him till he migrated to Pakistan. They

were in possession as tenant under other mortgagees of 6/7th share and paid them due rent.

4. Paras 7 to 10 of the plaint give a clear picture of claim of plaintiffs-appellants in this suit, which read as follows:-

“7. The plaintiffs purchased entire property, the photostat copy of the site plan is attached with this plaint for a consideration of ₹25000/- from Jeewan Mal, Shanti Parsad sons of Kirpa Ram, Mukandi Lal s/o Jamuna Dass r/o Ambala City. The plaintiffs purchased the mortgagee rights of 6/7th share of the entire suit property from Ram Gopal himself and Mukhtaram of Khushi Ram ss/o Atma Ram through deed of redemption dated 12.1.1971 and which was registered on dated 28.1.1971. Thus the plaintiffs became full owner of 6/7th share of the suit property and stopped paying rent to the mortgagers and as he was no more tenant but the complete owner of 6/7 share.

8. That after the migration of Bahajudeen the 1/7th share of the mortgagees right of Bahajudeen vested in custodian of Muslim Evacuee Property Act, Govt. of Pepsu.

9. That the defendant migrated from Pakistan and in that way the plaintiffs were in possession of ½ share of 1/7th i.e. 1/14 of the property mortgaged with Bahajudeen and 1/14th share was in possession of defendant as tenant under the custodian and similarly defendant paid ½ share of other mortgagees of 6/7 share but after redemption the

defendant vacated the rest of the building which was under mortgagees of 6/7 share.

10. That 1/7 share of Custodian property was in total 49 square yards out of which defendant has only 24½ square yards, but the defendant is in possession of 80 square yards i.e. in possession of 55½ square yards were without any right, against law and against the wishes of the plaintiffs.”

5. It is evident from above pleadings that plaintiffs are alleging share of defendant in the suit property as per allotment made to him vide conveyance deed dated 20.06.1984 (Ex. D-21) to the extent of 24½ sq. yard. They further alleged that despite having share to the extent of 24½ sq. yard, defendants are in possession of 80 sq. yards i.e. 55½ sq. yards more than their share. This is the basis for plaintiffs to claim possession of 55½ sq. yards out of suit building.

6. The suit was decreed by then Sub Judge IInd Class, Fatehgarh Sahib but the judgment and decree passed by learned Sub Judge IInd Class was set aside by Ist Appellate Court and suit of plaintiffs was dismissed with the observation that remedy available to plaintiffs is to seek partition of joint holdings as per share of parties. Relevant observations in this regard made by Ist Appellate Court in para 8 of the judgment are reproduced as follows:-

“8. *There is force also in this argument of the ld. counsel for the defendant-appellants that the plaintiff-respondents were required to file suit for partition for separating 1/14th share purchased by his clients and the remaining*

by themselves. In my opinion also the remedy available to the plaintiff-appellants was to claim possession of their share by way of partition by metes and bounds. When a building is not already partitioned as is the contention of the plaintiffs themselves, possession of no specific area can be claimed by either party saying that it falls within its share. That being so, the suit is not maintainable in the present form and the learned lower Court ignored this aspect simply remarking that no argument was advanced by either side. I feel even if no argument is advanced, still it is the duty of the Court to see that an effective decree is passed. The Court should not pass such a decree which is un-executable.”

7. I have heard learned counsel for parties and gone through the lower Court record with their assistance.

8. As per pleadings of parties, it is admitted case of plaintiffs that defendants have 1/14th share in suit property to the extent of 24½ sq. yards but are in possession of more area than their share. Appellants are co-owners in suit land and the remedy available to one of the co-owners is to seek partition of his share in joint property by metes and bounds. Though, learned counsel for appellants has tried to make out that defendants were allotted some other property bearing no. 33/10 while number of suit property is 34/10 but this submission of learned counsel has no merit in view of specific pleading in paras 7 to 10 in the plaint quoted above. In the entire plaint, plaintiffs have not specifically given identity of suit property by its number or have pin-pointed the area of 55½ sq. yards of which they

seek possession. In these circumstances pleadings of parties are quite relevant to decide the matter. In para 10 of the written statement, defendants have specifically stated that they are owner to the extent of 1/7th share in the suit property and this plea of defendants was not rebutted in reply. Without expressing any opinion on the specific share of parties in suit property I am of the considered opinion that learned Ist Appellate Court has rightly declined the grant of relief as sought by plaintiffs by applying legal proposition that if a co-sharer is in possession of more than his share in joint property, the remedy available to other co-sharer is to seek partition by metes and bounds.

9. Learned counsel for appellants could not point out any legal or factual infirmity in the observations made by learned Ist Appellate Court while reaching above conclusion. No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

August 17, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No