

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

RSA No.373 of 2009

Date of decision : 08.04.2016

Mahavir Saini and others

...Appellants

Versus

Jaishi Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Amrik Singh, Advocate for the appellants.

Mr. Rajender Kumar, Advocate for
Mr. Rajeev Dev Sharma, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.942-C of 2009

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

Applications stands allowed.

Main case

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit, filed claiming separate possession by way of partition of the suit property on account of same having become

unpartitiable, has been dismissed.

Mr. Amrik Singh, learned counsel appearing on behalf of appellants submits that the trial Court in para No.13 gave the following findings:-

“13. After considering the arguments and from the scanning of documents as well as evidence produced by the plaintiffs, it reveals that property, no doubt, was purchased by one Babu Bodh Raj Saini vide registered sale deed dated 29.4.55. From the scrutiny of sale deed it reveals that father of the plaintiffs Babu Bodh Raj Saini, purchased a specific portion with specific discrept on which have been rectified in the sale deed and as such he can not say that he has purchased the share. No doubt verdict of two courts have already came on the file that plaintiff Babu Bodh Raj Saini is co-sharer over the suit property pertaining to khasra No.450/167/170 to the extent of 10 marlas but these judgments have been decided about more than 22 years ago and even one of the judgment is passed about 32 years ago and the situation is now has been changed because at that time, plots purchased by the father of the plaintiffs as well as other vendees are vacant but now all the vendees have raised their construction over their respective portion and even the factum has been admitted by the plaintiffs in his plaint in para No.11, when since no land/site is left vacant, as construction in the shape of houses in multi-storeyed buildings have been raised over whole of the land in dispute by the vendors and vendees except the plaintiff, which shows that it becomes a complete locality i.e. a Mohalla wherein number of persons are residing there. So if the other persons had purchased the plots for the purpose of construction of their houses, then question of joint

ownership does not arise for the reason, different vendees have purchased specific area with specific boundaries and descriptions according to his requirement and thus raised construction thereof. Even the sale deed produced by the plaintiffs also shows that they have purchased specific area with specific boundaries and therefore I think situation now itself proved that property is not joint property amongst the vendees who purchased specific portion from the vendors. The question may be different if plaintiffs filed suit for partition, immediately after passing the judgment Ex.P1 by the Court of Sh. Amarjit Chopra, Additional District Judge, Gurdaspur but he remained silent for a period of about 22 years. Besides this there is a unexhibited jamabandi and khasra girdawari on the file, which lying in the last part of the file, if we gone through these documents, then it is clear that father of the plaintiffs namely Babu Bodh Raj Saini s/o Mohan Lal had purchased specific area with specific description from vendor Jaishi Ram whereupon one Harbans Lal is in possession in the capacity of Ghair-Lakhilkaar.”

The lower Appellate Court also affirmed the aforementioned findings. He submits that in view of the aforementioned findings, it is discernible that vide registered sale deed dated 29.04.1955, the father of the plaintiff-Babu Bodh Raj Saini had purchased the specific portion of specific description and not the share and the earlier findings rendered 22 and 32 years ago would not come into way. Though despite the fact that the area in dispute has become mohalla after parties have raised the construction. Even though, the property remained unpartitiable rightly so, claim of compensation qua share cannot been taken away and thus urges this Court to formulate following substantial question of law:-

1. Whether the share of co-owners can be denied on the premise that the property in dispute has been become unpartitiable, much less, cannot be partitioned?

Mr. Rajender Kumar, Advocate for Mr. Rajeev Dev Sharma, learned counsel appearing on behalf of respondent No.1 submits that concurrent findings of fact cannot be interfered with as the property in dispute has become unpartitiable owing to the construction raised for a period of time. The appellants-plaintiffs had cause of action to claim the partition by metes and bounds immediately on the passing of the judgment Ex.P1. Even jamabandi and khasra Girdawri have not been proved in accordance with law, in essence, they have failed to discharge the onus as per provision of Section 101 of the Indian Evidence Act and thus urges this Court to affirm the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the paper book.

This Court while noticing the contention of the learned counsel for the appellants, issued notice of motion, which reads thus:-

“Delay in re-filing is condoned.

Contends that the father of the appellant had purchased the property in the year 1955, however, no construction was raised. Subsequently, he filed a suit for possession which was dismissed and appeal followed in which the judgment of the learned trial Court was modified and the Appellate Authority held that the appellant and one Harbans Lal against whom the suit was filed would be entitled to the ownership of 10 marlas of land jointly. Subsequently, the appellant filed a suit for partition which

has now been dismissed by the trial court and the first Appellate Court by holding that the property was incapable of partition. Further contends that in any eventuality his ownership was not in dispute and the appellant was therefore entitled to get the land partitioned or in the alternate be compensated if it was established that the property was incapable of being partitioned.

Notice of motion for 20.05.2009.”

On perusal of para No.13 rendered by the trial Court (Supra), it is evident that sale deed reflects the purchase of the share with specific description and in case parties are unable to seek partition at appropriate time and in the meantime, construction on the entire property has been raised and is not able to seek partition, can equally be compensated in terms of money, therefore, trial Court ought to have passed composite decree by giving an opportunity to assess the valuation of the share by taking into consideration the collector/market rate by calling upon the defendants to pay the compensation on account of their share.

Keeping in view the aforementioned facts and circumstances, impugned judgment and decree are hereby set aside. Suit of the appellants-plaintiffs is decreed with observation that plaintiffs-appellants are entitled to compensation qua their share.

Substantial questions of law as noticed above is answered in favour of appellants-plaintiffs and against the respondents-defendants.

Composite decree in this regard be passed.

Appeal stands allowed.

08.04.2016

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**(AMIT RAWAL)
JUDGE**