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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1387-2010 (O&M)

Date of decision : 21.11.2016

Jagdev Singh

... Appellant

Versus

Ram Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Kumar Yadav, Advocate
for the appellant.

Mr. Munish Gupta, Advocate
for respondent Nos.1 to 6.

Mr. Jai Vir Yadav, Advocate
for respondent No.7.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff, namely, Jagdev Singh, is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking partition of the suit property denoted by letters ABCD in site plan attached with the plaint as described as under:-

“North: House of Sh. Bohla Ram, length A to B 73', South : Path C to D 73', East House of Ram Dayal, B to C 58', West : Path A to D 58', situated within residential area of Village Sehlang Tehsil and District Mohindergarh which is joint property of parties and is a part of Ahata No.360, Ghar No.534 of Consolidation of 1947 B.K. in which plaintiff and proforma defendant have 1/3rd share”.

has been dismissed, in essence, the judgment and decree of the trial Court has been set aside.

Mr. Sandeep Kumar Yadav, learned counsel appearing on

behalf of the appellant-plaintiff submits that the suit aforementioned was instituted on the ground that one Nathuram, the common ancestor of the parties, was owner of the house in dispute and after his demise, the property devolved upon his successors by way of natural succession as he died intestate. No doubt the agricultural land had already been partitioned amongst the siblings including the married sister. The trial Court decreed the suit, but the lower Appellate Court has erroneously upset the judgment and decree on the premise that defendant Nos.2 to 4 had set up a plea of ouster and had been able to prove the same. In fact defendant No.1, namely, Parbhati son of Nathuram, had not disputed the claim of the plaintiff, in essence, he was also in agreement with the jointness of the property. There is no documentary evidence on record to prove the ouster, in essence, defendant Nos.2 to 4 have failed to establish the long, continuous and adverse possession. The principles of ouster though vaguely pleaded, had not been proved.

He on instruction from his client, namely, Jagdev Singh, who is present in Court, submits that he is willing to even not disturb the possession of defendant Nos.2 to 4 and accept the compensation of his share in terms of money, in case the Court embarks upon the provisions of Sections 3 & 4 of the Partition Act, 1893 (for short 'the 1893 Act').

Mr. Munish Gupta, learned counsel appearing on behalf of the respondent Nos.1 to 6, submits that de hors of the fact that a plea of ouster had been taken, but the suit was liable to be dismissed for want of impleading the necessary and property party i.e. Fourth co-sharer/married daughter. In the absence of impleadment of all the co-sharers, the suit for partition cannot proceed/succeed and rightly so, the relief has been declined.

Once the appellant-plaintiff had acquiesced to the partition proceedings amongst all the siblings, he cannot pick and chose and seek the partition by determining his own share and it is, in this background of the matter, the suit had rightly been dismissed.

Mr. Jai Vir Yadav, learned counsel appearing on behalf of respondent No.7/defendant No.1 does not dispute the claim of the appellant-plaintiff and submits that he has no objection in case the property, in dispute, is partitioned in the manner and mode indicated above i.e. 1/3rd share each.

He further submits that the married daughter was not included in view of the un-amended provisions of Section 8 of the Hindu Succession Act.

I have heard the learned counsel for the parties and appraised the paper book and of the view that defendant Nos.2 to 4 have not been able to establish the ouster, in essence, long, continuous and settled possession, much less, *animus possidendi*, in the absence of any documentary evidence. In my view, the lower Appellate Court being the last Court of fact and law was required to examine the aforementioned aspect and having failed to do so, the suit could not have been dismissed. Having taken the plea of ouster, defendant No.2 to 4 do not dispute the jointness of the property. In view of such situation, I am of the view that the suit land was liable to be partitioned, in essence, by passing a preliminary decree.

Since the appellant-plaintiff, namely, Jagdev Singh, who is present in Court, has passed on instructions to Mr. Sandeep Kumar Yadav with regard to the agreement of receiving the amount of compensation qua his sharer, I deem it appropriate to decree the suit by passing in

“Terms Of Money”.

This Court has called upon Mr. Munish Gupta, learned counsel representing defendant Nos.2 to 4 to apprise the Court whether any of member representing defendant Nos.2 to 4 is present in Court or not and found that defendant No.4, namely, Ashok Kumar son of Ram Kumar son of Nathu Ram is present in Court. He has informed the resolution being meted out by the Court and on instructions, he submits that his client is willing to compensate the appellant-plaintiff and as well as defendant No.1 in terms of money.

In view of the consensus, noticed above, it is held that there shall partition of suit property, not by metes and bounds, but in terms of money.

The trial Court shall call upon all the parties to the *lis* to submit their respective particulars qua Market/Collector Rate of the property and thereafter, by taking into consideration the provisions of Sections 3 & 4 of the 1893 Act determine the share i.e. 1/3rd each as claimed by all the parties to the *lis* in “Terms Of Money”.

Accordingly, the judgment and decree of the lower Appellate Court, in view of the aforementioned consensus arrived at between the parties, is hereby set aside.

Preliminary decree, in terms of the aforementioned observations, is ordered to be drawn.

The appeal stands disposed of.

21.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No