

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

RSA No.29 of 2010

Date of Decision: 08.12.2016

M/s Goel Sales Associates and another

... Appellants

Vs.

Gobind Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Amit Jhanji, Advocate,
for the appellants.

Mr. Namit Gautam, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is the second appeal of the defendants in a suit filed by the respondents-plaintiffs, seeking separate possession of the suit property by partition. The relief of permanent injunction was also sought by the plaintiffs, restraining the defendants (hereinafter to be referred to as the appellants) from making any additions or alterations in the suit property.

The suit having been decreed in favour of the plaintiffs and the first appeal filed by the present appellants, against that judgment, having been dismissed by the lower appellate Court, this appeal has come to be filed.

2. As per the respondents-plaintiffs (hereinafter to be referred to as the plaintiffs), one Shri Ram Sahai was the owner of building no.B-IX-350,

situated at Chauri Sarak, near Division No.3, Ludhiana. He sold one double storeyed constructed shop of an area of land measuring 20.28 sq. yards to the plaintiffs, vide a sale deed dated 23.05.1990, registered with the Sub-Registrar, Ludhiana, on 24.05.1990. The sale consideration was stated to be Rs.70,000/-.

It was averred in the plaint that the possession of the shop on the ground floor was already with the plaintiffs whereas possession of the first floor was given to the plaintiffs by the seller at the time of execution of the sale deed.

It was further contended that there was one more shop towards the west of the disputed shop, which had been sold to Krishan Lal Avtar Kumar.

Both these properties were described in the site plan annexed with the plaint.

It was further contended that the aforesaid persons, i.e. Krishan Lal Avtar Kumar, had only purchased the ground floor of the shop and that one *Chaubara* was already constructed on both the shops, i.e. the one purchased by the plaintiffs and the other one purchased by the aforesaid two persons, which did not have any intervening wall bifurcating the said *Chaubara* into two parts.

The possession of the *Chaubara*, it was further contended in the plaint, was being enjoyed by the plaintiffs as also the other owners thereof and a stair case had been constructed towards the west of the shop of Krishan Lal Avtar Kumar, for access to the *Chaubara*.

3. As per the plaint, Ram Sahai died and after his death, his widow, Smt. Sarla Devi, sold a part of the building, measuring 114½ sq. yards, to

appellant-defendant no.1, alongwith her share in the *Chaubara* (as was constructed on top of the shop of Krishan Lal and Avtar Kumar).

The first defendant and the plaintiffs thereafter continued to enjoy ownership of their respective parts of the *Chaubara* but as the plaintiffs were not getting the “full fruit from their share in the *Chaubara*” without the partition thereof, they asked the first defendant to partition it but she continued to postpone the matter on one pretext or the other.

Yet further, it was contended that the plaintiffs had stored goods in the *Chaubara* of a value of more than Rs.25,000/-, and one week before filing of the suit, defendant no.1 developed a dishonest intention and in connivance with defendant no.2, started threatening to take possession of the entire *Chaubara* after removing the belongings of the plaintiffs.

Their plea to the defendants to desist from doing so not having met with any success, the suit for partition of the *Chaubara*, and for a decree of permanent injunction against the defendants, was filed on 21.11.1992.

4. Upon notice issued to them, the defendants appeared and filed a written statement raising the usual preliminary objections on maintainability, locus etc., further contending that the title of the plaintiffs to the suit property was already in dispute in a case titled as Prabh Dayal Singh v. Naresh Kumar and others, in which the defendants in the present *lis* had been impleaded as defendants no.7 and 8. It was, therefore, contended that the present suit could not be continued and was liable to be stayed.

The defendants also contended that the plaintiffs were not in possession of the suit property at all and that no injunction can be granted against a true owner, restraining him from enjoying the fruits of their property.

5. On merits, it was averred in the written statement that the plaintiffs were not owners of land measuring 20.28 sq. yards by virtue of the “alleged sale deed” dated 23.05.1990 / 24.05.1990 and that the possession of the first floor had never been delivered to the plaintiffs by the vendors.

As such, it was contended that the plaintiffs had no right, connection or interest in the first floor, i.e. the suit property, which was contended to be owned by the first defendant and further, that even the stair case (through which there was access to the *Chaubara*) was in the exclusive possession of the defendants.

It was further contended that defendant no.1, Ritu Gupta, had purchased the property through a registered sale deed dated 10.07.1992 and as such, the question of partition of the property did not arise.

As regards the contention of the plaintiffs that goods worth Rs.25,000/- were lying in the *Chaubara*, that averment was also denied alongwith all other contentions of the plaintiffs.

6. The plaintiffs having filed a replication to the written statement refuting the contents thereof and reiterating those of the plaint, the following issues were framed by the learned Additional Civil Judge (Senior Division), Ludhiana:-

- “1. Whether the plaintiffs are entitled to separate possession of the suit property? OPP
2. Whether the plaintiffs are entitled for the injunctions as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is liable to be stayed as alleged in the para no.2 of the preliminary objection? OPD

5. Whether the suit is liable to be dismissed as the plaintiffs are not in possession? OPD
6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Relief.”

7. The plaintiffs examined four witnesses, including the first plaintiff Gobind Ram, one Devi Dayal, Dalip Singh and Ashok Malhotra. (Both numbered as PW2).

The defendants, in turn, examined Ganga Prashad, Rajiv Bajaj, Munish Gautam, Gorakh Goel, Sanjiv Verma, Vijay Kumar and Prabhat Kumar.

8. After considering the aforesaid oral evidence as well as the documents tendered in evidence by both sides, the learned Additional Civil Judge found that other than the cross-examination of the plaintiffs' witnesses, by DW Gorakh Goel, who claimed that he had purchased the suit property from the first defendant and was the owner of the property bearing no.B=IX-350/2, there was no other evidence led to disprove that the *Chaubara* was not sold vide Ex.P1, to the plaintiff, by the late Ram Sahai.

It was held that the said sale deed, Ex.P1, was prior to the sale deed relied upon by the defendants with regard to sale of the suit property to them alongwith the passage leading up to it, as the said passage was existent at the time of the purchase by the plaintiffs.

An endorsement of the sale deed was also found to be proved as Ex.P2, in the register of the Deed-Writer, i.e. PW1 Devi Dayal.

9. Further, though the defendants (in oral evidence) had even denied the existence of the *Chaubara*, it was found by the Court that even as

per the sale deed in favour of the second defendant, executed by the first defendant, Ex.DW/2, and in the municipal record, the existence of the *Chaubara* stood proved, as also in the sale deed dated 01.01.1999 and therefore, that contention of the defendants had to be rejected.

10. On the aforesaid reasoning, it was held that since the sale deed of the *Chaubara* in favour of the plaintiffs stood proved and the existence thereof in any case could not be denied in the face of documentary evidence, the suit of the plaintiffs for separate possession thereof deserved to be decreed, alongwith their prayer for permanent injunction.

Consequently, the suit was so decreed by the first Court.

11. In the first appeal filed before the learned Additional District Judge, by the present appellants, that Court, after noticing the pleadings and the evidence led, as also considering the judgment of the learned lower Court, found force in the contention and the arguments raised before it, on behalf of the plaintiffs, that there were three shops existent on the ground floor of the building, one of which was purchased by one Mr. Malhotra of Malhotra T.V. Centre, and that the adjoining shop was purchased by the plaintiffs, alongwith its first floor. The 3rd shop was found to have been purchased by Krishan Lal Avtar Kumar but without purchase of the first floor.

It was further found that the stair case adjoining the shop of Krishan Lal Avtar Kumar, going up to the *Chaubara*, was being used by the original owner Ram Sahai and the plaintiffs, jointly.

The first appellate Court also held that it was the admitted case that after the death of Ram Sahai, defendant no.1 purchased the remaining part of the building including the share of the owner in the *Chaubara*, from

the widow of Ram Sahai, vide a sale deed, Ex.DW4/2.

It was also found that in an earlier sale deed, in favour of Ram Sahai, the *Chaubara* found mention, as also in the sale deed of the plaintiffs, Ex.P1, and the sale deed of the defendants and that the title of Ram Sahai stood proved.

The lower appellate Court also, like the lower Court, found that though it was contended by the defendants that there was no *Chaubara* on the first floor of the shop, nor was there any stair case going to the *Chaubara* from the side of 'Chauri Sarak', on which the shop of the plaintiffs was situated, and therefore, the entire first floor of the plaintiffs' shop and the adjoining shop had been purchased by the first defendant and further sold to second defendant, however, DW1 Ganga Parshad, had initially admitted in his cross-examination that there was a *Chaubara* on both the shops, which was a "joint *Chaubara*"; but later he changed his statement, stating that there was no joint *Chaubara*.

DW2 had also denied in his cross-examination that there was any *Chaubara* over the shop in dispute and also that there was no stair case adjoining the shop, with the same stand reiterated by DW4 Gorakh Goel. Yet, in the written statement, it was contended in paragraph 1 thereof, that the stair case was in the exclusive possession of the defendant, which obviously meant that the existence of the stair case was admitted.

Further, in paragraph 4 of the written statement, it was stated that defendant no.1 was in exclusive possession of the entire first floor, including the *Chaubara*.

Yet further, it was found by the learned Additional District Judge, that the defendants had filed an application on 09.02.1994, for the

appointment of a Local Commissioner, in which again it was mentioned that the stair case was in possession of the defendants, even though DW4 showed his ignorance with regard thereto. He however admitted the photograph Ex.AX and in fact, in further cross-examination, even admitted the existence of the *Chaubara* on the shop of Malhotra T.V. Centre, though he stated that he had no concern with that *Chaubara*.

12. Further, recording that the existence of the *Chaubara* had also been admitted by DW4 in his affidavit, Ex.DW4/A, though he tried to deny the contents thereof by stating that he had signed without going through its contents, it was held that the photograph in any case proved that there was a *Chaubara* existent on the first floor, over three shops, i.e. the shop of the plaintiffs and the adjoining shops of Malhotra T.V. Centre and Ajanta Gallery.

Still further, noticing that even in the site plan, Ex.P3 attached with the sale deed in favour of the plaintiffs, Ram Sahais' signatures were present, in which the shop sold was shown to be 'DS' (double storeyed).

It was also seen by that Court that Ex.PX was a document of the Municipal Corporation, which also proved the existence of the *Chaubara* on the shops of the plaintiffs.

Hence, on all the aforesaid reasoning, the findings of the Additional Civil Judge were upheld by the first appellate Court also and the appeal filed by the appellants dismissed.

13. Before this Court, though Mr. Amit Jhanji, learned counsel appearing for the appellants, has reiterated all the arguments raised in the pleadings and the arguments of the appellants- defendants before the Courts below; however, when the concurrent findings of fact were pointed to,

learned counsel found it difficult to actually refute them from the documentary evidence in the summoned record. The said record obviously includes the site plan Ex.P5, as also the sale deed Ex.P1, which describes the property sold by the late Shri Ram Sahai to the plaintiffs as a two storeyed property.

Mr. Namit Gautam, learned counsel for the respondents, also pointed to the concurrent findings of fact recorded by the Courts below, including the copies of the photograph, Ex.AX1, to submit that it was very obvious that the building was a two storeyed one, i.e. the ground floor with a *Chaubara* made on it.

14. Having considered the aforesaid arguments as also the judgments of the Courts below, with documentary evidence pointed out to learned counsel for the appellants, which, as already stated, he could not refute, I find no reason to dislodge the concurrent findings of fact recorded by the Courts below, no perversity in those findings having been found by this Court in any manner.

In fact, both the judgments are found to be well reasoned, and in consonance with the documentary evidence led by the plaintiffs in the form of the sale deed, Ex.P1 and the site plan Ex.P5, the latter showing a stair case as also a room constructed over two shops, in the front portion of the first floor, with the rear being an open terrace. Similarly, the photograph, Ex.AX, very obviously shows a construction on the first floor of at least three shops.

15. Hence, the aforesaid, seen with the fact that as noticed by the Courts below, the defendants had actually admitted to the existence of the stair case and the *Chaubara* on the first floor, in paragraphs 1 and 4 of their written statement, though they tried to deny the same in oral evidence, this

Court also reaches the conclusion that the plaintiffs were very much owners in possession of the first floor of their shop, purchased alongwith the shop by them, vide the sale deed Ex.P1, and as such they are also entitled to partition of the said floor, including the *Chaubara* and therefore, the suit was correctly decreed in their favour by the Courts below, in all respects.

Consequently, finding no merit in this appeal, it is dismissed, with costs of Rs.5000/-.

December 8, 2016
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.