

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

1. RSA No.1826 of 2011 (O&M)
Date of decision : 24.09.2016

Rajinder Kumar ...Appellant

Versus

Gazender Kumar and others ..Respondents

2. RSA No.1827 of 2011 (O&M)
Date of decision : 24.09.2016

Rajinder Kumar ...Appellant

Versus

Gazender Kumar and others ..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Yogesh Chaudhary, Advocate for the appellant.

Mr. A.S. Virk, Advocate for respondent Nos.1 to 11.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two appeals.

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby suit bearing No.19 titled as Gian Chand deceased through his LRs Vs. Rajinder Kumar and anothers, seeking declaration and permanent injunction with consequential relief challenging the judgment and decree dated 11.09.1996 and the mutation No.5438 to be declared illegal, nonest, void and not binding on the rights of the plaintiff in respect of the property as shown in red colour in the site plan, whereby the defendant Nos.1 and 2 have been held not to have any right, title, interest in

the property and also been injuncted not to interfere in any manner in ownership or in possession either by alienation or any otherway.

It is pertinent to mention here that defendant Nos.1 and 2 in Civil Suit No.19 had also filed Civil Suit No.20 against the plaintiff. Civil Suit No.19 is for declaration and permanent injunction and Civil Suit No.20 is for permanent injunction qua forcible dispossession. Both the suits aforementioned were consolidated and decided together.

Mr. Yogesh Chaudhary, learned counsel appearing on behalf of appellants submits that respondent-plaintiff had instituted the suit bearing No.19 (hereinafter called as Civil Suit No.1) that property described in para No.1 of the plaint was part of the previously khasra Nos.493 and 492. Property described in para No.1 reads thus:-

“North: Kaithal-Karnal Road.

South: Plot of Murlidhar etc.

East: Property of heirs of Chetan Sarup

West: Gali

situated within the abadi deh of village Fatehpur Near Police Station Pundri Tehsil and District Kaithal”

on the premise, that khasra Nos.492 and 493 were owned and possessed by Jai Kishan Dass and Ram Kishan Dass and Mansa Ram. However, according to the averments in the suit, oral partition between the heirs in respect of the aforementioned khasra numbers had taken place in the year 1972 and partition shown in the red, green and yellow colour in the attached site plan forming part of khasra No.493 had fallen to the shares of Vasdev Lal, Gian Chand (Red), Chetan Sarup (Green) and Murlidhar (Yellow) and other properties so owned and possessed by other three person

were allotted and granted to the other heirs. Appellants-plaintiff had instituted the Civil Suit No.20 for injunction on the basis of the judgment and decree dated 11.09.1996. He submits that owing to the suit titled as Rajinder Kumar Vs. Sham sunder. Sham Sunder had suffered a decree in favour of Rajinder Kumar with regard to the suit property. The aforementioned property is self-acquired property and did not have any connection with the partition and, as the previous suit was filed against Chetan Sarup who was party in the earlier suit. No steps have been taken to challenge the same, therefore, decree dated 20.01.1992 would not have any effect, however, on the enquiry, found that appellant-plaintiff in Civil Suit No.20 of 2007 acquired the right by way of judgment and decree dated 11.09.1996. In fact, the suit property was not part of the partition of the property and therefore Court below ought not to have granted the declaration.

He further submits that Courts below overlooked the earlier civil suit No.220 of 1985 which resulted into passing of the judgment and decree dated 20.01.1992 which was in fact filed by Murlidhar i.e. sons of Mansa Ram that they be declared owner in possession of the property described in para Nos.8A and 8B of the plaint, which is part of the joint property, whereas, on the other hand, grandfather of the present appellant Chetan Sarup was impleaded as defendants.

The aforementioned judgment and decree was granted only qua the property given by the Murli Dhar son of Mansa Ram. There was no declaration either as regards to the alleged share or even as regard to the property which is now involved in the litigation. He further submits that the

appellant had become owner in possession of the suit property vide judgment and decree dated 20.01.1992. Courts below have gravely and wrongly shifted the onus upon the plaintiff. The basic fact, which has been ignored is, that the revenue record clearly proved that the property involved in the suit No.220, was gair mumkin makan, comprised in Rectangle No.493 khasra No.2/2 was in exclusive ownership in possession of the grandfather namely Chetan Sarup, who inherited the property from his father namely Sham Sunder. All these factors have not been taken into consideration and the fact that property was different and not granted the injunction and thus urges this court for affirming of the findings under challenge.

Per Contra, Mr. A.S. Virk, learned counsel appearing on behalf of respondent Nos.1 to 11, submits that site plan placed on record by the appellant in the Civil Suit No.20 is identical. The appellants have failed to show that the property was different from the one in judgment and decree dated 20.01.1992. Concurrent findings cannot be interfered until and unless there is gross illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book and of the view that judgments and decrees under challenge are perfectly, legal and justified. Both the Courts below have appreciated the oral and documentary evidence. In fact the appellants have failed to lead any evidence fortifying that the suit property in the present lis was not included in the partition, held in 1972, which concededly was done in the presence of predecessors-in-interest Chetan Sarup. Chetan Sarup predecessors-in-interest had filed the admitted written statement in Civil Suit No.220/1985 which culminated into judgment and decree dated

20.01.1992 Ex.P6 and Ex.P7 and there was impediment for the appellant to reopen by obtaining the decree of 11.09.1996. In my view, such an Act is to circumvent the previous decree which is not permissible. The factum of the partition was not reflected in the revenue record. It is in this background of the matter, the appellant had taken the advantage by filing the civil suit against father of the plaintiff. The parties, as per the partition, had been in continuous possession of the property and living peacefully in it. It surfaced only after the decree of 11.09.1996, in essence, partition of 1972 acknowledged in the decree dated 20.01.1992, shows it had been effected.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the Courts below. Judgment and decree are based on appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

As regards the other case, once in other RSA regarding civil suit, appellant have not been able to prove ownership as per the judgment and decree dated 11.09.1996, therefore, in my view injunction has rightly been declined.

The appellant cannot take the benefit of the partition having been reflected in the revenue record, for, it was reflected too that the site plan filed in their suit and in the suit of the respondent are/were identical.

Both the appeals are dismissed.

24.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No