

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 12, 2016

1. R.S.A.No.3512 of 2012 (O&M)

Pargan Singh (since deceased) through L.Rs

...Appellants

Versus

Sukhcharan Singh & others

...Respondents

2. R.S.A.No.3513 of 2012 (O&M)

Pargan Singh (since deceased) through L.Rs

...Appellants

Versus

Sukhcharan Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Rai Singh Chauhan, Advocate,
for the appellants in both the appeals.

Mr.Malkeet Singh, Advocate,
for respondent Nos.1 to 4 in RSA No.3512 of 2012 &
for respondent Nos.1 to 3 in RSA No.3513 of 2012.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeal Nos.3512 and 3513 of 2012 as the common questions of facts and law involved in both the appeals are the same.

RSA No.3512 of 2012 is arising out of the dismissal of Civil Suit bearing No.396 of 1998 for seeking partition and separate possession

of house comprised in Khasra No.57 (17 marlas) and Lal Lakir of the Village, whereas RSA No.3513 of 2012 is arising out of dismissal of Civil Suit No.438 of 1998 seeking permanent injunction restraining the defendants from digging any earth or raising any construction in the land.

Mr.Rai Singh Chauhan, learned counsel appearing on behalf of the appellants submits that the Lower Appellate Court has erroneously dismissed the suit as sufficient evidence was brought on record to show that the appellant-plaintiff and the respondents are in joint Khata. The dismissal of the previous suit could not be hit by the provisions of Order 23 Rule 3, much less Order 23 Rule 3-A CPC as such provisions do not apply to the partition suit. In a previous round of litigation, similar suit was decreed. However, this Court vide order dated 30.8.2011 passed in **Regular Second Appeal Nos.2165 and 2199 of 2006 (Sukhcharan Singh and others Versus Pargan Singh)**, remanded the matter back to the trial Court. The withdrawal of the aforementioned suit for partition on 7.8.1998 on the basis of alleged compromise Ex.D1 was based upon the misrepresentation and ill-advice and accordingly Civil Suit No.396 of 1998 was filed on 20.8.1993 and, thus, urges this Court to formulate the following substantial questions of law for determination by this Court:-

- 1) Whether the impugned judgment and decree passed by the ld.Lower appellate court can be sustained in the eyes of law whereas the ld.Trial court after considering the entire evidence rightly decreed the suit and passed the preliminary decree in respect of 1/3rd share of the plaintiff/appellant in the suit property?
- 2) Whether the family partition which has not been acted upon and the suit property was recorded as a joint holding in the record of rights, can be recognized until and unless the same is given effect in the revenue record in view of the law

laid down by this Hon'ble Court?

3) Whether the fresh suit for partition was maintainable as there was no adjudication on merit in the earlier suit which was withdrawn as neither the respondents filed any written statement nor any evidence was led and no merit consideration was ever adjudicated. Thus whether the principle of resjudicata is applicable which has rightly been negated by the Id.Trial Court.?

Mr.Malkeet Singh, learned counsel appearing on behalf of respondent Nos.1 to 4 in RSA No.3512 of 2012 and respondent Nos.1 to 3 in RSA No.3513 of 2012 submits that the suit was withdrawn by making a statement on the basis of the compromise. No explanation has come forward in filing the separate suit, much less there is no challenge to the statement made by the counsel. The remedy, if any, was to move an application. Even otherwise, in the cross-examination, the appellant-plaintiff admitted his signatures on the compromise Ex.D1 and, thus, the defendants discharged the onus in proving the compromise. By virtue of the compromise, the parties had already partitioned the suit property and constructed the house having separate possession. The suit for possession, *ex-facie*, was not maintainable and all these factors have been noticed by the Courts below.

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

The relevant portion of the cross-examination, in which the plaintiff admitted his signatures on the compromise reads thus:-

“I know English little bit. I have seen the agreement/ compromise dt.29.7.98 which is Ex.D1 and the same bears my signatures at two places mark A and Mark B. I do not know Satnam Singh s/o Maha Singh.”

Ex.PJ was tendered through the statement of the counsel which was seriously objected to, therefore, the same could not be looked into, much less has not been proved on record in accordance with law. The withdrawal of the suit is based upon the compromise. No explanation has come forth how the compromise was arrived at by playing fraud or under coercion/threat. In my view, provisions of Order 23 Rule 3-A CPC would definitely come into force as the separate suit for seeking partition and as well as injunction was not maintainable and rightly so, the Lower Appellate Court has dismissed the same.

I do not intend to differ with the findings rendered by the Lower Appellate Court. No substantial question of law arises for determination.

There is no merit in both the appeals. The same are accordingly dismissed.

April 12, 2016
ramesh

(AMIT RAWAL)
JUDGE