

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**RSA No.4929 of 2015
Date of decision: 08.01.2016**

Raj Kumar and another

... Appellants

Versus

Dyal Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. Digvijay Nagpal, Advocate,
for the appellants.

AMOL RATTAN SINGH, J.

By this appeal, the appellants, who were defendants in the suit filed by the present respondents before the trial Court, have challenged the judgment and preliminary decree passed by the trial Court as also the Lower Appellate Court, in favour of the respondents herein, holding that the respondents-plaintiffs are co-sharers in the suit land, to the extent of $\frac{1}{2}$ share and are entitled to get the same partitioned to that extent, in metes and bounds. The appellants have further been restrained from alienating the suit land beyond their recorded half share.

2. The plaintiffs had filed a suit for possession of $\frac{1}{2}$ share of the land and house constructed upon it, measuring 13 Biswansi, 7 Kachwasi

(stated to be equivalent to about 3 and ½ marlas), comprised in Khewat No.277, Khatoni No.337, Khasra No.2555/2474, as recorded in the record of rights ('jamabandi') for the year 2004-05, situated at Indra Road, Malout, as described in the site plan stated to have been attached with the suit.

3. The case of the plaintiffs was that the suit property was earlier owned and possessed by Leela Ram and Jeewan Ram, of whom Leela Ram was the predecessor-in-interest of the plaintiffs-respondents, while Jeewan Ram was the predecessor-in-interest of the defendants-appellants. The suit land, though in the joint ownership of both, the plaintiffs and the defendants, was in the possession of the defendants. Hence, the plaintiffs sought to be put in possession of their share by way of partition and therefore, instituted the suit, seeking that they be accordingly put in possession and the defendants (present appellants), be enjoined from interfering in such possession thereafter.

4. Upon a written statement having been filed by the appellants, the trial Court framed the following issues:-

- “1) What is the share of parties in suit property? OPP
- 2) Whether plaintiffs are entitled to separate possession by way of partition of suit property? OPP
- 3) Whether plaintiffs are entitled to permanent injunction as prayed for? OPD
- 4) Whether suit is not maintainable in present form? OPD
- 5) Relief.”

5. Respondent No.1 appeared as PW1 and respondent No.4 as PW2 before the trial court and also examined one Mam Chand as PW3 and document writer, Suresh Kumar, as PW4.

The respondents-plaintiffs also tendered 'Fard jamabandi'

(record of rights) for the year 2004-05 in evidence, as Ex.P1, a sale deed dated 27.04.2010 as Ex.P2, death certificate of Leela Ram as Ex.P3 and a copy of a letter written to the Tehsildar, seeking valuation of suit property, as Mark-A.

6. The first appellant herein, appeared as DW1 and also examined one Baljinder Singh as DW2. However, no documentary evidence was produced by the appellants.

During cross-examination, DW1 admitted that the plaintiffs-respondents are co-sharers to the extent of $\frac{1}{2}$ share of the property, though the appellants-defendants were in exclusive possession thereof and were also residing in it. The ownership of Leela Ram and Jeewan Ram, i.e. the respective predecessors-in-interest of the plaintiffs and defendants, was also admitted. The particulars of the property, including its location etc., were again admitted by the present appellants.

On the above, the trial Court came to the conclusion that the suit property was indeed in the joint ownership of the parties, with the plaintiffs being owners to the extent of $\frac{1}{2}$ the share.

7. The contention of the appellants was that the suit land being extremely small in area, i.e. $3\frac{1}{2}$ marlas only, it could not be partitioned. The trial Court rejected this argument to the extent that, as regards rights of the parties, the defendants could not seek exclusion of the ownership of the property, only on the ground that it was a small property and if at all any objection was to be raised with regard to the mode of partition, on account of the property being too small to be actually partitioned, that objection would be dealt with at the time of passing of the final decree.

8. Having held as above, a preliminary decree was passed in

favour of the respondents herein (plaintiffs) that they are co-sharers to the extent of $\frac{1}{2}$ share and are entitled to get it partitioned. It further restrained the appellants from alienating the suit land beyond their recorded $\frac{1}{2}$ share, till the partition was effected in metes and bounds.

9. The appellants having first appealed against the said judgment and decree dated 26.08.2013 in the Court of the learned District Judge, Sri Muktsar Sahib, were ousted in the appeal also, on the same grounds, with the first appellate court agreeing, after detailed discussion of the evidence, with the trial Court.

10. The appeal having been dismissed vide judgment and decree dated 02.03.2015, the present appeal has been filed.

Mr. Digvijay Nagpal, learned counsel appearing for the appellants, submitted that, in view of the admission of the first appellant (as DW1), to the 50% joint ownership of the respondents in the suit property, he could say nothing further on the issue of the admitted ownership of the suit property. However, he submitted that the appellants were willing to compromise the matter by either buying out the share of the respondents, or selling the entire property to them and as such, the entire matter may be compromised by issuing notice and settling the matter before this Court.

11. The above argument, is obviously not acceptable at all. In any case, the final decree is still to be passed, with regard to partition of the property and the mode of such partition, with the preliminary decree, i.e. the one under challenge, only holding the right of the respondents to their $\frac{1}{2}$ share and their right to get it partitioned with no interference from the appellants.

Obviously, if the appellants are interesting in compromising the

matter with the respondents, there is nothing to stop them from either effecting such a compromise out of Court, or by offering the terms of compromise in the learned trial Court, before the passing of the final decree, in view of the allegedly non-partionable nature of the property, which would be considered by that Court on merits. As such, I find absolutely no reason to interfere with the well reasoned judgments passed by the learned Courts below, and no question of law that requires adjudication by this Court.

12. In view of the above, this appeal is dismissed *in limine*, with no order as to costs.

08.01.2016
dinesh

(AMOL RATTAN SINGH)
JUDGE