

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.2880 of 2014 (O&M)
Date of decision:4.4.2016

Yaad Ram

... Appellant

versus

Bhawani Shanker and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Jitender Nara, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J.

1. This is the plaintiffs' second appeal in a suit filed by him seeking partition of property held by his late father Nafe Singh (also father of respondents No.1 to 5 and husband of respondent No.6).

The facts, as taken from the judgment of the learned Civil Judge, are that the plaintiffs' father had left three plots, one measuring 416 sq. yards, situated at village Ladrawan, Tehsil Bahadurgarh, one measuring 220 sq. yards situated at village Kharkhoda, District Sonapat, and the third, measuring 100 sq. yards, situated at Ashok Nagar, Bahadurgarh.

As per the plaintiff, he had 1/7th share in each of the said plots, alongwith the six defendants (present respondents) and that the defendants wanted to sell off property more than that falling to their share. Since no partition had been effected qua these residential plots, he sought a decree for partition of the suit property, so as to prevent the respondents-defendants

from selling more than their share.

2. Upon notice having been issued by the learned Civil Judge (Junior Division), Bahadurgarh, the respondents-defendants (hereinafter to be referred to as the defendants) filed a written statement taking preliminary objections with regard to the maintainability of the suit, further stating that the suit property had been orally partitioned on 16.04.2006, by way of a family settlement and that each of the parties to the *lis*, were in separate possession of their respective shares.

It was further stated that the plaintiff was born from the first wife of the late Nafe Singh and as such could not claim any property standing in the name of respondent No.6, i.e. Premo Devi, second wife of Nafe Singh. Therefore, it was contended that the house constructed on the property at Ashok Nagar, Bahadurgarh, being in the name of defendant No.6, no share in it could be claimed by the plaintiff.

On merits, though the relationship of the parties *inter se* each other was admitted, it was denied that the plaintiff and defendants were residing separately in their houses. It was also denied that Nafe Singh had left behind three plots at the time of his death, whereas actually, as per the defendants, he had constructed a house consisting of 12 rooms and two verandahs in village Ladrawan, on the plot measuring 416 sq. yards. It was further contended that in the absence of Nafe Singh and other family members the plaintiff had demolished the said house and sold the material costing Rs.15,00,000/-.

It was further contended that the plaintiff used to beat his parents and family members and consequently he had to leave village

Ladrawan and had shifted to village Cholka in District Sonapat, alongwith his family.

It was admitted that the plaintiff, however, had 1/7th share out of the said plot, but as regards the plot measuring 220 sq. yards, at Kharkhoda, Nafe Singh only had half a share in the said plot and consequently, the plaintiff only had 1/14th share therein.

As regards the plot at Ashok Nagar, Bahadurgarh, of 100 sq. yards, it was repeated that it was, in fact, a house in the ownership of Smt. Premo Devi, defendant No.6, second wife of Nafe Singh and that Nafe Singh had constructed upon it during his service period and had given it to Smt. Premo Devi through a decree of declaration in the year 1991. Therefore, the plaintiff had no right or interest in it.

It was still further contended that the defendants had already sold their share in the plot after the family partition which took place on 16.04.2006 but the 1/14th share of the plaintiff in the plot measuring 220 sq. yards at Kharkhoda, had been left separately by the defendants.

3. On the pleadings of the parties, the following issues were framed by the learned Civil Judge:-

- “i) Whether the plaintiff is entitled to a decree of partition as mentioned in para no.3 of the plaint as per their share as alleged in the plaint? OPP
- ii) Whether the suit is not maintainable? PPD
- iii) Whether the plaintiff has no cause of action to file the suit? OPD
- iv) Relief.”

The plaintiff examined himself and one Ved Pal as his witnesses and by way of documentary evidence he placed on record a site

plan, Ex.PW1/8.

The defendants also examined two witnesses, i.e. one Daya Nand as DW1 and defendant No.2 Pardeep as DW2, who also tendered their respective affidavits, other than placing on record documentary evidence, Exs. D1 to D7.

4. A perusal of the judgment of the learned Civil Judge further shows that the plaintiff deposed in terms of his plaint, giving the year of death of his father to be 2004, stating that in the year 1988 his father had handed over the plot measuring 100 sq. yards, at Ashok Nagar, Bahadurgarh, to him (plaintiff), after which he had been residing on it since then, upon raising construction in 1988.

In his cross-examination, the plaintiff had stated that he had never seen the sale deed for the plot measuring 280 sq. yards at Kharkhoda and had also expressed ignorance with regard to whether his father had only half a share in the said plot. In fact, he admitted that he had never seen the plot and that he did not know its dimension either. He also could not tell as to when his father retired from the Railways and as to when he started living at Cholka.

Thereafter, the judgment reads to say that the plaintiff stated in his cross-examination that his father had shown the plot at Kharkhoda to him in the year 2001 and that “no words were written when the plot at Barahi Road, Bahadurgarh” (Ashok Nagar) was handed over to him in 1988.

He also expressed ignorance as to whether his step mother was the owner of the plot situated at Bahadurgarh. A document, Mark-A, was shown to him, to which he stated that the signatures on it were possibly

those of his father.

PW2 is also seem to have corroborated the plaintiffs' testimony, further stating that the plot was handed over to the plaintiff at Bahadurgarh, as Nafe Singh had told the plaintiff that his step mother and her children would not let him live in Ladrawan. This witness further stated that for construction of the house on the plot, the plaintiff took some money from him (PW2) in the year 1988, after which he has always resided on the plot at Ashok Nagar, Bahadurgarh.

5. However, the defendants had placed on record a judgment and decree dated 30.06.1991, Exs.D4 and D5 respectively, by which defendant No.6, Premo Devi, had been declared to be owner in possession of the plot measuring 100 sq. yards, situated at Bahadurgarh. That decree was found to have never been challenged by the plaintiff.

6. As regards the other properties, i.e. the 416 sq. yards plot at Ladrawan, it was held by the learned Civil Judge, that the plaintiff was proved to be owner of a 1/7th share thereof, as admitted by the defendants.

The contention of the plaintiff that he had seen the plot at Kharkhoda in the year 2001 was found to be false, on the basis of the fact that the sale deed by which the plot was purchased, Ex.D1, showed that it had been purchased by Nafe Singh in the year 2004, in the name of himself, i.e. Nafe Singh, and his wife, Premo Devi.

Thus, holding that the plaintiff, not being a Class-I legal heir of Premo Devi in any case (even though she was alive), he could have no share in her half share of the property and therefore, he could have only a 1/7th share in the half share falling to Nafe Singh, i.e. a 1/14th share in the total

plot measuring 220 sq. yards, at Kharkhoda.

7. The contention of the defendants that the suit property at Ladrawan had already been partitioned, was rejected by the learned Civil Judge, on the ground that DW2 (defendant No.2), Pardeep, admitted that no partition took place in his presence. No revenue record was also produced to that effect.

8. Consequently, the suit of the plaintiff was decreed to the extent of him being entitled to a 1/7th share in the plot measuring 416 sq. yards at village Ladrawan and a 1/14th share in the plot measuring 220 sq. yards at Kharkhoda.

The plaintiff was held to be not entitled to any share in the plot measuring 100 sq. yards at Ashok Nagar, Bahadurgarh, in view of the decree dated 30.06.1991 in favour of defendant No.6 Premo Devi, holding her to be the exclusive owner thereof.

9. In the first appeal filed by the plaintiff, though an application was filed by him, stating that he had inadvertently stated that he was only entitled to a 1/7th share in the plot at Ashok Nagar, Bahadurgarh, whereas actually he was the exclusive owner in possession thereof, and as such he be allowed to amend the pleadings, the application was dismissed, with the revision filed against such dismissal still pending in this Court, at the time of decision of the appeal, which was therefore decided by the learned first appellate court, there being no stay granted by this Court, in the Civil Revision.

10. Consequently, while noticing that it was the contention of the plaintiff in his application that the electricity and water connection etc. in

the house at Bahadurgarh were in his name and therefore, he was proved (as per the plaintiff), to be in possession thereof, the learned lower Appellate Court found that the judgment and decree dated 30.06.1991 was obviously intentionally suffered by the father of the plaintiff, Nafe Singh in favour of his second wife, defendant No.6 and with the said judgment and decree not under challenge, the plaintiff could claim no right to the said property.

Also finding that the plaintiff was an educated person, serving in the Delhi Police, he was also not allowed to withdraw the suit with liberty to file a fresh one, to take the plea of exclusive ownership etc., especially as there was nothing on record to show that the judgment and decree dated 30.06.1991 was suffered by Nafe Singh under any pressure or coercion.

In this regard, an affidavit of Nafe Singh (Ex.D2), was also referred to by the learned first Appellate Court, to the effect that his son Yaad Ram (plaintiff) was indulging in anti-social activities and had also demolished Nafe Singhs' house and as such, he (Nafe Singh) was, therefore, “debarring him” from his moveable and immovable properties. A public notice to that effect was also relied upon by the defendants, as Ex.D3, thereby giving effect to the affidavit.

11. In fact, the learned first Appellate Court found that despite the above, the suit had still been decreed in favour of the plaintiff, to the extent of a 1/7th share in the Ladrawan property and 1/14th share in the Kharkhoda property and as such, that judgment required no interference with.

12. The defendants also having filed cross-objections/a second appeal before the learned first Appellate Court, the first Appellate Court eventually decreed as follows:-

- “(i) Plaintiff and all the defendants are entitled to 1/7th share each, in the plot measuring 416 sq. yards situated at village-Ladrawan, Tehsil Bahadurgarh, District Jhajjar;
- ii) Plaintiff and all the defendants are entitled to 1/7th share each, in the half of the plot measuring 220 sq. yards situated at Kharkhoda, Tehsil Kharkhoda, District Sonapat. The remaining half of this plot is owned by Smt. Premo Devi.
- iii) However, plaintiff and defendant no.1 to 5 are not entitled to any share in the plot measuring 100 sq. yards situated at Ashok Nagar, Barahi Road, Bahadurgarh, because it is defendant no.6 Smt. Premo Devi who is exclusive owner thereof under the judgment & decree dated 3.06.1991.

A preliminary decree of partition be prepared in above terms.”

(The decree of June 1991 has been referred by the Courts below at places as the judgment and decree dated 03.06.1991, and at other places as the judgment and decree dated 30.06.1991).

13. Thus, the decree of the learned Civil Judge was modified/clarified to the extent that whereas the plaintiff and all the respondents would have a 1/7th share each in the plot measuring 416 sq. yards at village Ladrawan, the plaintiff and all the defendants would also have a 1/7th share in half of the plot measuring 220 sq. yards at Kharkhoda, with the remaining half in the exclusive ownership of respondent-defendant no.6, Premo Devi. As regards the plot situated at Ashok Nagar, Bahadurgarh, Premo Devi was held to be the exclusive owner thereof, by virtue of the judgment and decree dated 30.06.1991.

14. Before this Court, learned counsel for the appellant submits that the appellant-plaintiff had filed a suit seeking partition of the properties owned by his father, with the respondents-defendants being his step brothers and sisters. He submits that the first property, being the plot measuring 416 sq. yards situated in Village Ladrawan, District Jhajjar, has rightly been partitioned by the Court below vide the impugned judgments and decrees, to the extent of 1/7th share in favour of the appellant-plaintiff and 1/7th share each in favour of the respondents-defendants.

It is submitted that the second property, i.e. the 220 sq. yards plot in Village Kharkhoda, District Sonapat, has also been correctly partitioned vide the impugned judgments and decrees, to the extent of 1/14th share in favour of the appellant, with the remaining share being that of respondent-defendant No.6, because this plot was jointly owned by the appellants' father and his step mother, i.e. mother of the respondents-defendants.

15. However, presently, as submitted by learned counsel, the dispute is qua only the third property, i.e. the plot measuring 100 sq. yards owned by the appellants' father at Ashok Nagar, Bahadurgarh, in which, according to the appellant-plaintiff, the respondents-defendants have no right whatsoever, because his father, by way of a family settlement before 1998, had handed it over to the appellant. He submits that, however, vide the impugned judgment and decree, the said plot is stated to have been the subject matter of another suit, which was decreed in favour of the step mother of the appellant, i.e. mother of the respondents-defendants, vide decree dated 3.6.1991/30.06.1991.

16. Mr. Nara further submits that the appellant has now filed another suit for setting aside the aforesaid decree, on the ground that it was obtained by fraud/collusion, and as such, no finding of the Courts below in the present *lis*, be held against the appellant in the other suit now filed by him.

17. Having considered the argument, it is seen, however, from a perusal of the judgment of the learned first appellate Court, that it was recorded that actually the appellant-plaintiff took the plea of exclusive ownership of the plot measuring 100 sq. yards, situated in Ashok Nagar, Bahadurgarh, for the first time before that Court (in the appeal out of which this second appeal arises). A finding of fact has also been recorded that the said plea had been taken by the appellant-plaintiff after deleting the typed word “share” in the grounds of appeal and substituting it by writing the words “exclusive owner” by pen. Therefore, the plea taken by the learned counsel before this Court now, to the effect that the findings of the Courts below be not taken to the against the appellant-plaintiff in the suit stated to have now filed by him for declaring the earlier judgment and decree dated 3.6.1991 to be null and void, cannot wholly be accepted, for this, as also the reason given hereinafter.

18. The Courts below, in the present round of litigation, have given detailed reasoning with regard to the share of the appellant-plaintiff and the respondents-defendants, in each of the three properties owned by their father.

The dispute qua the third property, i.e. the 100 sq. yards plot at Ashok Nagar, Bahadurgarh, to the extent of exclusive ownership thereof by

the appellant, was raised, as already noticed, for the first time before the lower appellate Court.

Though otherwise the plea raised by the counsel for the appellant may not be untenable, as the finding of the Courts below, in the present round of litigation, as regards the plot of 100 sq. yards at Bahadurgarh is concerned, rests wholly on the passing of an earlier decree suffered by Nafe Singh in favour of the respondents, to which the appellant-plaintiff was not a party; however, any question of limitation and maintainability of that suit, keeping in mind the pleadings of the respective pleadings of the parties in the present *lis*, would obviously be taken into consideration by the Court seized of those proceedings.

As regards the finding by the learned lower Appellate Court (in the present round of litigation), that Nafe Singh did not seem to be under any pressure or coercion to have suffered the decree dated 30.06.1991 in favour of the respondents herein, it would be also open to the Court before which the suit has been instituted, seeking the setting aside of the said decree dated 30.06.1991, to consider also the evidence led by both the parties before the Courts below in this round of litigation, and thereafter come to its independent conclusion as to whether the said decree was the result of any coercion or pressure, in the light of all evidence brought before that Court by either party.

Hence, as regards the binding nature of the judgment and decree dated 03.06.1991/30.06.1991, upon the plaintiff, the suit now filed by the plaintiff, would be considered wholly on its own merits; of course, keeping in view the issues of limitation and maintainability, including as per

the provisions of order 2 Rule 2 CPC, which would all be issues to be decided wholly on their own merits, by that Court.

19. With the aforesaid observations, finding no merit in the present appeal, the same is dismissed, with no order as to costs.

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20. In view of the fact that the appeal has been dismissed, *in limine*, as above, the question of condonation of delay of 99 days in filing the appeal is rendered academic and is not gone into.

4.4.2016
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(AMOL RATTAN SINGH)
JUDGE