

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

C.M. NOS.14978-79 C OF 2015 &

R.S.A. NO.5996 OF 2015

DATE OF DECISION: MAY 16, 2016

Ram Dass

.....Appellant

VERSUS

Dharampal etc.

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

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

Present: Mr. Jangvir S. Hooda, Advocate,
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.14978 C of 2015

C.M. is allowed.

Exemption is granted from filing certified and true typed copies
of the impugned judgements and decree.

C.M. No.14979 C of 2015 & R.S.A. No.5996 of 2015

Challenge in this appeal is to the judgement and decree dated
27.03.2015 passed by the Civil Judge (Junior Division), Gurgaon, whereby
the suit of the appellant-plaintiff for declaration to the effect that he
alongwith respondent-defendants is owner in possession of 1/5th share of
plot measuring 500 Sq.Yards, as shown in red colour by letters 'ABCJIE' in
the site plan appended alongwith suit situated within *lal dora abadi deh* of

Village Daultabad, Tehsil and District Gurgaon, as detailed therein, with a mandatory injunction, restraining all the defendants from raising further construction and not to interfere in peaceful possession to the extent of his share, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Gurgaon on 22.07.2015.

It is the contention of learned counsel for the appellant that both the Courts below have failed to appreciate that although the agricultural land has been partitioned between the appellant-plaintiff and the respondent-defendants by their father, Chote Lal, who was a predecessor-in-interest and owner of the suit property as also the agricultural land, which was allotted by virtue of release deed executed by Chote Lal during his life time, the residential property was not so partitioned. In fact, release deed dated 23.04.2008 pertaining to 2 marlas 2 sarsai of land comprised in Khasra No.154 was executed by Chote Lal in favour of appellant-plaintiff . The said release deed cannot be co-related with the residential plot measuring 500 Sq.Yards, which is the property in dispute. The Courts have wrongly proceeded to hold that apart from the agricultural land, the residential property had also been partitioned between the appellant-plaintiff and respondent-defendants by Chote Lal, Predecessor-in-interest of the parties to the suit. He, on this basis, contends that the judgements and decree as passed by the Courts below cannot sustain and deserve to be set-aside and the suit of the appellant-plaintiff decreed.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgements as passed by the Courts below as also the evidence led by the

appellant-plaintiff.

The admitted facts are that the predecessor-in-interest of the appellant-plaintiff and the respondent-defendants was Chote Lal, who not only owned agricultural land but also owned the suit property i.e. a plot measuring 500 Sq.Yards as also land in Village Daultabad, which is comprised in Khasra No.154, where the appellant-plaintiff was given 2 marlas and 2 sarsai of land by Chote Lal in the said Khasra number vide release deed dated 23.04.2008. It is the positive stand of the respondent-defendants that this release deed dated 23.04.2008 in favour of the appellant-plaintiff was a part of the partition of the residential property. It is not disputed that the appellant-plaintiff is having his residential house in Khasra No.154. Apart from that civil Suit No.48 of 2012 was preferred by the appellant-plaintiff against defendant Nos.4 and 5 titled as Ram Dass Vs. Narinder and Surinder, which was a suit for permanent injunction and mandatory injunction on the basis of release deed dated 23.04.2008, restraining the respondent-defendants from raising any sort of construction or wall in front of the wall of the house of the appellant-plaintiff. In para 3 of the plaint, he had categorically stated that the respondent-defendants are the owners of the houses on the northern side of the appellant-plaintiff. Alongwith the suit, site plan Ex.P17 was also appended, which clarified the position. This admission in the plaint clearly establishes that the appellant-plaintiff admitted the ownership and possession of houses of the respondent-defendants towards the northern side of the house of appellant-plaintiff. It would not be out of way to mention here that Chote Lal died on 23.09.2010. A perusal of the site plan, which has been appended alongwith the suit, Ex.P1, when seen alongwith site plan Ex.D7, which was part of

Civil Suit No.48 of 2012 preferred by the appellant-plaintiff, would clearly depict that all the respondent-defendants had raised their separate construction on the total plot and the specified constructed portions/houses of the respondent-defendants have been shown in the site plan. All these facts point towards the partition having been taken place of residential property of deceased Chote Lal, predecessor-in-interest of the parties to the suit and, therefore, the assertion of the appellant-plaintiff that he is in joint possession of 1/5th share of the plot, cannot be accepted.

PW2 Varinder Singh, Halqa Patwari, Village Daultabad, has submitted his report, Ex.P3, which shows the plot in dispute to be in *lal dora* and there also it explicitly shows the built up houses and in possession of the respondent-defendants. Even the photographs, which have been produced on record by the respondent-defendants, Exhibits D1 to D3 establish that the houses have been constructed in their respective shares out of the plot in question. The electricity bills, which have also been placed on record, further indicate that the electricity connection is in the name of the respondent-defendants.

Strangely enough, the appellant-plaintiff when appeared before the Court, admitted in his cross-examination that Chote Lal had, during his life time, allotted agricultural land in favour of the parties to the suit by way of the release deed and had also partitioned the residential properties. The assertion of appellant-plaintiff that 100 Sq.Yards out of 500 Sq.Yards was allotted to him cannot be accepted as when he was confronted with the record of the separate release deed dated 23.04.2008, which is an area of 2 marlas and 2 sarsai and a separate house towards the southern side of the houses of respondent-defendants No.4 and 5 i.e. adjacent to their house, he

could not give any satisfactory reply. PW4 Kulbir Singh, who had appeared on behalf of the appellant-plaintiff, had categorically stated that Chote Lal had partitioned his property between his five sons and all the male inheritors of Chote Lal got property in the partition and they raised construction of their respective houses as per the partition. He also admitted the construction being raised by the respondent-defendants and had seen the parties to be in settled possession of their houses for the last many years and that they had been putting up separately. All these facts show that the partition of the property of Chote Lal had taken place during his life time and the parties have acted upon such partition.

It may be added here that no objection was raised by the appellant-plaintiff when construction was raised by the parties in their respective shares as per the partition. The electricity bills, as have been produced by the respondent-defendants, clearly show that they have been residing in their houses since long and they are in settled possession, which further indicates that the partition of the residential property of Chote Lal had taken place and the parties had acted upon the same as well.

The Courts below have further held that the suit is bad for non-joinder of necessary parties as the appellant-plaintiff, if is claiming that the suit land has not been partitioned as yet, then his four sisters, namely, Jeeto, Atro, Bala and Suresh were to be impleaded as parties and further sister of defendant Nos.4 and 5, who are children of Ranjit, 5th son of Chote Lal, was also to be impleaded as a party as all the abovesaid persons are alive and they also have a right in the suit property. Findings on this count, therefore, also cannot be faulted with.

No other point has been argued by learned counsel for the

appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.14979 C of 2015 for restraining the respondents from interfering/alienating the disputed land is also dismissed.

May 16, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE