

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

**R.S.A No.5386 of 2014 (O&M)  
Date of decision :28.03.2016**

**Ganesh Parsad Aggarwal**

**..... Appellant**

**Versus**

**Smt. Sushila Devi and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Ramender Chauhan, Advocate  
for the appellant.

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**DARSHAN SINGH,J**

**CM No. 12749-C of 2014**

There is delay of 05 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 05 days in filing the appeal is hereby condoned.

**RSA No.5386 of 2014**

This Regular Second Appeal has been directed against the judgment and decree dated 23.05.2014 passed by the learned District Judge, Bhiwani, vide which the appeal filed against the judgment and decree dated 28.07.2012 passed by learned Civil Judge (Jr. Division),

Bhiwani, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-appellant Ganesh Parsad Aggarwal has filed the suit for declaration to the effect that the suit property bearing M.C Unit No. S-668, S-669, S-670 and S-671 situated at Gali Chandruhedra, Lohad Bazar, Bhiwani, District Bhiwani is the joint property of the parties and has not been partitioned so far. Defendants no.2 and 3 had no right to sell the suit property shown in the site plan in yellow colour attached with the plaint and the sale deed executed by them in favour of defendant no.1 is illegal, null and void and not binding on the rights of the plaintiff. He has also sought a decree for permanent injunction restraining the defendants from further selling the suit property without getting the same partitioned and not to change the nature of the property in dispute.

4. Defendants no.2 and 3 contested the suit on the grounds *inter alia* that the Haweli i.e. property in dispute was partitioned many years ago and the memorandum of partition was reduced into writing on 23.01.1937. The northern portion of the Haweli was allotted to the father of the defendants. The plaintiffs and other legal heirs of Sant Lal have got no concern with the ownership of the said portion. They also denied that the widow of Ayodhya Parsad has relinquished her 1/ 3<sup>rd</sup> share in favour of Beni Parsad, the father of the appellant. They further pleaded that Haweli in question has already been demolished and malba has been sold and the share of the plaintiff is in the shape of the plot.

5. Defendant no.1 pleaded that the sale deed no.5852 dated

29.08.2006 executed in her favour is legal and valid as the partition of the suit property had already taken place between the predecessor-in-interest of the plaintiff and defendants no.2 and 3. With these pleas, they pleaded for dismissal of the suit.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 05.03.2008:-

1. Whether the plaintiff is entitled for a decree of declaration that the house in question as detailed and described in the head note of the plaint, is an ancestral property and defendants no.2 and 3 have no right to alienate any specific portion of that house without getting a partition?OPP
2. Whether the sale deed in which the specific portion has been given but defendant no.1 by defendants no.2 and 3 is against law and fact, illegal null and void and his more than 1/ 3<sup>rd</sup> share belonging to defendants no.2 and 3 and therefore is not bent upon the rights of the plaintiff?OPP
3. Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff regarding the house in question or from asserting possession of more than 1/ 3<sup>rd</sup> share of the house till the partition is effected and further restraining the defendants from making any kind of construction or alienating the property till the partition is effected?OPP
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the suit of the plaintiff is not maintainable in the present for,?OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Whether the plaintiff has not come to the Court with clean hands?OPD
8. Whether the Civil Court has no jurisdiction to entertain and try the present suit?OPD
9. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 28.07.2012.

8. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal and the same was also dismissed by the learned District Judge, Bhiwani, vide impugned judgment and decree dated 23.05.2014. Hence this Regular Second Appeal.

9. I have heard Mr. Ramender Chauhan, Advocate, learned counsel for appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the suit property is the joint property of the plaintiff and respondent-defendants no.2 and 3, which has not been partitioned. The plaintiff has 6/15 share in the disputed Haweli. Thus, he contended that the sale deed executed by defendants no.2 and 3 in favour of defendant no.1 is illegal. The appellant is also entitled for the injunction restraining the defendants from further alienating the suit property and changing the nature thereof.

11. He contended that the learned Courts below have wrongly dismissed the suit filed by the appellant. There is no cogent evidence on record to establish that the suit property was partitioned.

12. I have duly considered the aforesaid contentions.

13. This is the Regular Second Appeal against the concurrent findings recorded by the learned Courts below. Thus, this Court has

limited jurisdiction to interfere. The appellant-plaintiff has alleged that the Haweli in dispute is the joint property owned by him and defendants no.2 and 3. He claimed that he has become the owner of the 6/15 share in the said Haweli. Beni Parsad, the father of the plaintiff had become the owner of 1/15 share out of the share of his father Sant Lal. He also got 1/3 share of Smt. Veera Devi. In this way, Beni Parsad has become the owner in possession of 6/15 share and after his death, the plaintiff has become owner in possession of the aforesaid property to the extent of 6/15 share. It is also alleged that no partitions has so far taken place.

14. In order to prove the aforesaid plea plaintiff himself has not stepped into the witness box. He has examined his Power of Attorney-Prem Chand Goyal as PW-1. In the cross-examination, he admitted that he has no proof that owners of the property were Ayodhya Parsad, Rampat and Jasram. He further admitted that in site plan of the Municipal Committee Mark B, Ayodhya Parsad, Rampat and Jasram have not been shown the owners of the suit property and Ayodhya Parsad has died about 100 years back. He further stated that he has no document to show that Sant Lal had become the owner of the suit property. Sant Lal had also died about 40 years back. He further categorically admitted in the cross-examination that in the site plan mark B, the suit property shown in yellow colour bears the property no. S-671, which has been shown as a separate unit in M.C. Record. He further admitted that except Murari Lal, no other person had any concern with unit no. 671. He also admitted that Rama Kant and Shankar Lal (defendants no.2 and 3) have become the owners of property no. S-671 after Murari Lal. He further admitted that

he has no documentary proof to show that Veera Devi had given 1/3 share to Beni Parsad. Thus, from the glaring admissions in the cross-examination of PW-1 Prem Chand Goyal, the General Power of Attorney of the plaintiff, it comes out that the property bearing the unit no.671 is a separate property owned and possessed by Murari Lal and after his death by defendants no.2 and 3. It is also not proved that Veera Devi, widow of Ayodhya Parsad had given her 1/3 rd share to Beni Parsad, the father of appellant.

15. The plaintiff has brought on record the copy of assessment register Ex.P-1. The same also depicts that property no. S-668 is owned and possessed by Puran Chand son of Sant Lal. Ex.P-2 is the copy of assessment register pertaining to property no. S-669 showing Beni Parsad son of Sant Lal as owner in possession. Ex.P-3 is the copy of assessment register pertaining to the property no. S-670 showing Sant Lal son of Jassa Ram as owner in possession and Ex.P-4 is the copy of assessment register pertaining to property no. S-671 owned and possessed by Murari Lal son of Bishan Dayal and thereafter, by defendants no.2 and 3 and at present by defendant no.1 Sushila Devi wife of Maha Singh. Defendants no.2 and 3 have sold the property no. S-671 measuring 132 sq.yards to defendant no.1. They were recorded as exclusive owners in possession of this property in the municipal record. The memorandum of partition Ex.D-2 dated 22.01.1937 also supports the case of the defendants with respect to the partition of the property in dispute.

16. Plaintiff-appellant has not himself stepped into the witness box. There were various facts which could only be in the personal

knowledge of the plaintiff. PW-1 Prem Chand Goyal, his power of attorney has not been able to answer/disclose various facts in the cross-examination. Thus, the non appearance of the plaintiff-appellant in the witness box raises an adverse inference against him. Consequently, the plaintiff has not been able to establish that the suit property is the joint property owned by him and defendants no.2 and 3. Rather, it is established that the same has already been partitioned and was in exclusive possession of the respective owners. Defendants no.2 and 3 were fully competent to alienate the portion owned and possessed by them to defendant no.1. Thus, plaintiff-appellant has rightly been declined the relief of declaration as well as injunction by the learned Courts below.

17. Therefore, I have no reason to differ with the well reasoned findings recorded by the learned Courts below which do not warrant any interference by this Court in the Regular Second Appeal.

18. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

**March 28, 2016**

s.khan

**(DARSHAN SINGH)  
JUDGE**