

RSA No. 5580 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5580 of 2014(O&M)

Date of Decision:27.5.2016

Indu Kuwar and another

---Appellants

vs.

Suresh Khatri and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vaibhav Prashar, Advocate
for the appellants

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?

Rekha Mittal, J.

The present appeal has been directed against the consistent findings recorded by the courts below whereby suit filed by the plaintiffs/

appellants Indu Kuwar and Veena Mala was dismissed by the trial court and the judgment and decree passed by the trial court have been affirmed in appeal by the Additional District Judge, Faridabad.

The facts relevant for disposal of the present appeal are that Indu Kuwar and Veena Mala, daughters of Sh. Bahadur Singh Khatri filed a suit for declaration that they alongwith defendant Nos. 1 and 3 have 1/4th share each in house bearing No. 1131, Block -C, SGM Nagar, Faridabad as the plot underneath the house was purchased by Sh. Bahadur Singh Khatri, their father. The construction of a pucca house over the plot was raised out of joint family funds. Since 1989, the plaintiffs and defendant Nos. 1 and 3 alongwith their family members have been residing in the house in question without any interruption. Sh. Bahadur Singh Khatri passed away on 25.1.2007 after prolonged illness and they jointly spent around Rs. 1,50,000/- on his treatment. Defendant No. 1 Suresh Khatri is wasting money in immoral activities. Their mother died on 2.6.2006 and the plaintiffs alongwith defendant Nos. 1 and 3 have succeeded to the house in question to the extent of 1/4th share each after death of their parents. Defendant No. 1 has developed greed to grab the entire 3/4th share and

defendant No. 3 has started threatening to sell the entire share to defendant No. 1 who wants to sell the said property at a meager amount of Rs. 1,50,000/- to defendant No. 2 and waste his entire money to satisfy his immoral acts.

Defendant No. 1 filed the written statement raising preliminary objection inter alia maintainability, locus standi, cause of action and plaintiff having not come to the Court with clean hands. It is admitted that the plaintiffs and defendants No. 1 and 3 are real brother and sisters. The answering defendant is residing at Pahari near NH-3, NIT, Faridabad.

Defendant No. 2 filed a separate written statement raising preliminary objections qua maintainability, cause of action, locus standi, concealment of material facts and non- description of the suit property. It has been denied that the plaintiffs and defendant Nos. 1 and 3 are joint owners in physical and continuous possession to the extent of 1/4th share each in the suit property with the averment that the answering defendant is absolute owner in possession of the suit property since long and without any interruption. It was further denied that Bahadur Singh Khatri had purchased the plot in question and constructed a pucca house over it.

Bahadur Singh Khatri was living with his wife in the house of defendant No. 2 on friendly terms. In the last months of his life, Suresh Kumar also started residing in the house of defendant No. 2 and after death of Bahadur Singh Khatri, respondent No. 1/defendant No. 1 arranged another accommodation and he is residing at Pahari NH-3, NIT, Faridabad. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Defendant No. 3 also filed the written statement raising the preliminary objections inline with stand taken by defendant No. 2. She has admitted relationship between the plaintiffs and defendants No. 1 and 3 but denied other averments raised in the plaint.

On careful and detailed consideration of the pleadings, issues framed for determination, evidence adduced on record and submissions made by counsel for the parties, the learned trial court determined issue Nos. 1 and 2 taken up jointly against the plaintiffs/appellants and as a result, suit was ordered to be dismissed. As has been noticed hereinbefore, the first Appellate Court concurred with the findings of the learned trial court without any variance and the appeal preferred by the plaintiffs was ordered

to be dismissed.

Counsel for the appellants has submitted that the learned trial court refused to rely upon photocopies of the sale deeds Mark 'A' and 'B' and for that reason non-suited claim of the appellants that the suit property belongs to their father Sh. Bahadur Singh Khatri. It is argued that the appellants have moved an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short “CPC”) for permission to place on record sale deeds dated 23.7.1985 and 27.12.1991 as Annexures P-1 and P-2. It is argued that in case the appellants are permitted to place on record the sale deeds, the same would establish their claim qua ownership to the extent of 1/4th share on the basis of natural succession to the estate left behind by Sh. Bahadur Singh Khatri.

I have heard counsel for the appellants, perused the paper book particularly the judgments passed by the Courts below.

The learned trial court answered issue Nos. 1 and 2 against the plaintiffs/appellants with the following observations:-

“Moreover the plaintiffs have failed to produce any documentary evidence in support of their claim. The

tendering of electricity bill Ex. PW1/A is of no use as it does not prove any title or interest of the plaintiffs over the suit property. The plaintiffs have only placed on record photocopies of sale deeds as Mark A and Mark B. The said sale deeds have not even been proved by any one of the attesting witnesses. Thus, there is nothing on record to prove that the house in question was purchased by father of the plaintiffs Sh. Bahadur Singh Khatri.”

Before the Appellate Court, an application was filed under Order 41 Rule 27 CPC for leading additional evidence to prove the sale deeds. It was averred that application moved by the appellants before the trial court to prove sale deed dated 27.12.1991 by way of additional evidence has not been disposed of by the trial Court. The first Appellate Court dismissed the application with the observations that plea that the application for additional evidence was left undecided by the trial court is factually incorrect as vide order dated 17.8.2012, the application was dismissed by the trial court and the order was never challenged by way of appeal or revision and thus has attained finality. It has further been held that

though according to the appellants, they are in possession of disputed house alongwith respondent Nos. 1 and 3, Indu Kuwar PW1 in cross examination had admitted that she is residing in House No. 11/23, Block-C SGM Nagar, Faridabad. She has also stated that she did not know exactly where respondent No. 1 Suresh Khatri is residing. She has further stated that respondent No. 3 Asha Singh is not residing in Faridabad.

The appellants have filed an application under Order 41 Rule 27 read with Section 151 CPC for seeking permission to place on record sale deeds dated 23.7.1985 and 27.12.1991 (Annexure P-1 and P-2). It is averred that the accompanied sale deeds are necessary documents for just and proper decision of the case and the same may be taken on record as additional evidence. Annexures P1 and P2 were allowed to be taken on record but the same being the photocopies of the sale deeds are not admissible in evidence. Counsel for the appellants is not in a position to say something as to how placing on record photocopies of Annexure P1 and P2 would advance cause of the appellants to prove that a plot was purchased by Sh. Bahadur Singh Khatri. This apart, the present suit pertains to dwelling house No. 1131 measuring 80 square yards situated at

Block-C, SGM Nagar Faridabad. Counsel for the appellants is fair enough to concede that even if photocopies of the sale deeds are taken into consideration, the same are not sufficient to connect the suit property with the sale deeds in question. He has further conceded that there is no material on record in order to connect the sale deeds in question with the house bearing No. 1133 measuring 80 square yards situated at Block-C, SGM Nagar Faridabad. As the plaintiffs/appellants have failed to establish that the suit property was previously owned by their father Sh. Bahadur Singh Khatri, no error much less illegality can be found in the judgments passed by the courts below when otherwise no question of law much a substantial one arises for adjudication.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

27.5.2016
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