

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

R.S.A. No. 6496 of 2017

Date of decision:- 29.11.2019

Harcharan Singh

...Appellant

Versus

Harbhajan Singh and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Gurcharan Dass, Advocate
for the appellant.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Saurav Kanojia, Advocate
for respondent No. 1.

RITU BAHRI J.

The present appeal is directed against concurrent finding of facts recorded by both the Courts below whereby suit filed by plaintiff/respondent No. 1 for separate possession by way of partition, has been decreed by the trial Court and in appeal, the lower Appellate Court partly allowed the appeal of the appellant and modified the judgment and decree of the learned trial Court and the plaintiff was held entitled to have 1/3rd share in the suit property separated by way of partition of the suit property with remaining 1/3rd share each being that of defendant No. 1 and 2.

Brief facts of the case, as put forth by respondent No. 1/plaintiff are that plaintiff and appellant/defendant No.1 are co owners/co sharers in the suit house, shown red in the site plan. Mohinder Singh @ Bachna was owner of the suit property, who bequeathed the same in favour of the plaintiff and defendant No.1 through Will dated 17.6.1975. Defendant

No.2 is arrayed being necessary party being legal heir of deceased Mohinder Singh. Parties to the suit are in specific possession over different parts in the suit property and they have raised construction in their respective possession. However, possession of the parties is not in accordance with the shares and plaintiff is in possession of lesser share than that of his share in the vacant space lying in the property. Considerable portion of the suit property is lying vacant. Suit property has not been partitioned and is lying joint, although the respective construction belongs to the respective parties in possession. Plaintiff has not been in a position to avail full advantage of his share and cannot utilize the property in full manner. Hence, the present suit.

The learned trial Court decreed the suit of the plaintiff/respondent No. 1 and respondent No. 1 and defendant No. 1/appellant were held entitled to separate possession by way of partition to the extent of $\frac{1}{2}$ share each out of property situated within lal lakir of village Dad, Tehsil and District Ludhiana as mentioned in the head note of the plaint.

However, on appeal filed by the appellant, the Lower Appellate Court discarded the will and modified the decree and the plaintiff/respondent No. 1 was held entitled to have $\frac{1}{3}^{\text{rd}}$ share in the suit property separated by way of partition of the suit property with remaining $\frac{1}{3}^{\text{rd}}$ share each being that of defendant No. 1 and 2.

Now, only the appellant has come up in appeal and respondent No. 1 has not challenged the judgment and decree passed by the Courts below. The appellant is challenging the judgment and decree of the Lower

Appellate Court on the ground that as per Mark B, C and D, the appellant

had purchased the properties from daughters of Kartar Kaur and Nand Kaur but merely on the ground that he could not tell the area, his plea of having purchased said portions has wrongly been discarded by the Lower Appellate Court.

The only question for consideration in the present appeal is that whether the appellant is exclusive owner of the properties (Mark B to D) and with respect to remaining portion, the decree has to be executed in favour of the plaintiff/respondent No. 1 to the extent of 1/3rd share and in favour of the sister as well 1/3rd share.

This aspect has been considered by the lower Appellate Court in para No. 22 of the judgment wherein defendant-Harcharan Singh was cross examined and he admitted that on southern side of the suit property, is the property of Tarlok Singh and on the Eastern side is street. He claims to have purchased the properties Mark B to D in the site plan produced by him from the daughters of Kartar Kaur and Nand Kaur but he could not tell the area purchased by him nor its dimensions. He has acknowledged that the document Ex D5 i.e agreement executed by Bhagwan Kaur does not bear the dimension or area. So, when defendant/appellant is not familiar with the date of purchase of the portions Mark B to D nor knows about its dimensions and the area, his plea of having purchased the said portions was held to be not sustainable.

Further appellant had conceded that Amar Nath had been appointed by him to take care of the suit property. It has also been admitted that birth of defendant No. 1 took place in the suit property and his father had raised construction over the suit property by incurring expenditure. He has also admitted the family photographs Ex P6 to P12. He has stated that

electric meter in the suit house is installed in the name of his father Mohinder Singh who was the owner of the suit house on the basis of his possession. Thus, the statement of defendant/appellant itself proves that the suit property was owned by Mohinder Singh and existence of the electric connection in the name of Mohinder Singh further proves that the suit property was owner by Mohinder Singh.

D.W.2 Hardeep Singh in his cross examination has stated that appellant and plaintiff are residing abroad and on their visit to India, they reside in the suit house and they had raised construction jointly. The marriage of both plaintiff and defendant No. 1/appellant were solemnized in the suit house. D.W.3 Harminder Singh also stated that Harbhajan Singh on his visit to India stayed in the house which is ancestral property of the parties.

Once plea of adverse possession has been raised, impliedly defendant No. 1 has admitted the ownership of the plaintiff and thus, the learned lower Court has erred in holding that the plaintiff is entitled to the relief of partition of the suit property to the extent of $\frac{1}{2}$ share on the basis of will executed by Mohinder Singh in favour of the plaintiff and defendant No. 1, especially when the will had not been proved. Learned counsel for the appellant has further argued that site plan attached with the plaint does not show any yellow portion.

Learned counsel for the appellant has argued that respondent No. 1 had made substantial improvements in the statement made in the Court which are beyond pleadings. Respondent No. 1 has admitted that there is no ration card and voter card in his name at the suit house and has admitted that construction at the spot is not as per site plan.

At this stage, learned senior counsel for respondent No. 1 states that along with plaint, the site plan (Ex PW1/A) was attached and suit property is situated within the lal lakir which is a built area and revenue authorities have no jurisdiction to partition the same. Learned senior counsel for respondent No. 1 submits that respondent No. 1 would be satisfied if in execution 1/3rd share be given to the parties as per site plan Ex P.W.1/A.

Heard learned counsel for the parties.

There is no evidence to show that the appellant went abroad between the period 1965 to 1970 and has purchased any plot around the house which is part of the dispute between the parties.

In the absence of any documentary evidence, no evidence can be given that the appellant had purchased property (Mark B to D) after going abroad and had made construction over there. The finding cannot be given by the lower Appellate Court unless there is documentary evidence to show that the appellant had purchase the property after 1970 and had become independent owner of portion Mark B to D. The lower Appellate Court had rightly accepted the site plan (Ex PW1/A) and decreed the suit of the plaintiff for 1/3rd share of the property after discarding the will.

In this backdrop, the finding of facts recorded by Lower Appellate Court does not require any interference by this Court, as it does not suffer from any infirmity or illegality.

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed. However, the Executing Court will get the partition effected as per site plan (Ex P.W.1/A), as the

Executing Court is bound by the site plan.

29.11.2019

G Arora

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(*RITU BAHRI*)
JUDGE