

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

RSA No. 1065 of 2013(O&M)
Date of decision: 20.12.2017

Smt. Snehlata

.....Appellant

versus

Smt. Satya Goel and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. J.K.Chauhan, Advocate
for the appellant.

Mr. Ramesh Sharma, Advocate
for respondents No. 1 to 7.

Rajbir Sehrawat,J.(Oral)

This is the second appeal filed by the plaintiff challenging the concurrent judgment and decree passed by the Courts below whereby the suit filed by the present appellant was dismissed.

For convenience, the parties herein would be referred to as the plaintiff and the defendant; as they were described in the original suit.

The brief facts of the case are that the plaintiff/appellant herein filed a suit for declaration and permanent injunction to the effect that the plaintiff is the owner in possession of shop measuring 2 Biswas situated at village Abdullahpur, Tehsil Kalka, District Panchkula, as detailed in the head note of the plaint and that the judgment and decree dated 29.11.1997 passed in Civil Suit No. 59 of 1987 titled as Anand Sarup vs. Rattan Bala and the judgment and decree dated 28.03.2000 passed in Civil Appeal titled as Rattan Bala vs. Anand Sarup are illegal, null and void and not binding upon the rights of the plaintiff. A consequential relief of permanent

injunction was also sought for restraining the defendants from interfering in the peaceful possession of the plaintiff over the suit property.

It was pleaded in the plaint by the plaintiff that defendant No. 6 is the mother-in-law of the plaintiff. Earlier defendant No. 6 and Smt. Santosh Kumari wife of Anand Sarup (predecessor in interest of defendants No. 1 to 5) jointly purchased the land measuring 1 Bigha comprised in Khasra No. 256/111, 112 situated at village Abdullapur vide registered sale deed dated 05.04.1963. Thereafter, defendant No. 6 and the said Smt. Santosh Kumari raised construction over half portion of the land. Remaining 10 Biswas remained in possession of one Shri Sushil Kumar son of Shri Prem Chand. Thereafter, on 18.04.1969 Smt. Santosh Kumari died leaving behind defendants No. 1 to 5 as her legal heirs. Defendant No. 1 along with his family was running the business of timber merchant at village Dharampur for the last 35 years and they never visited the site of the suit property. Therefore, defendant No. 6 suffered a decree dated 04.09.1986 in favour of Munish Kumar, the son of the plaintiff, regarding the land measuring 2 Biswas out of the land comprised in Khasra No. 256/111-112. A mutation to this effect was also sanctioned on 17.09.1987 in favour of Munish Kumar. However, the said Munish Kumar died on 25.05.2000, issueless and unmarried, leaving behind the plaintiff as his sole legal heir. Regarding the inheritance of Munish Kumar a mutation was also entered in favour of the plaintiff. Accordingly, it was claimed by the plaintiff that she has now become the owner in possession of the suit property measuring 2 Biswas. However, in the month of January, 2005 defendants No. 1 to 5 came to the suit property and threatened to dispossess the plaintiff. But due to the intervention of the plaintiff, the defendants could not succeed.

However, the defendants No. 1 to 5 have told the plaintiff that they have already got the decree of partition in their favour regarding the suit property. Then the plaintiff came to know that defendants No. 1 to 5 had filed a suit for partition against defendant No. 6; in which a preliminary decree was passed in favour of defendants No. 1 to 5 vide judgment and decree dated 29.11.1997 and in appeal filed by defendant No. 6 against the same having been dismissed; the decree dated 28.03.2000 has been passed in appeal. Since these judgments and decrees have been passed at the back of the plaintiff, therefore, these were challenged by the plaintiff to be as not binding upon her rights.

Upon notice defendants No. 1 to 5 appeared and filed their joint written statement by taking routine preliminary objections. On merits it was admitted that earlier defendant No. 6 and Smt. Santosh Kumari had purchased the land measuring 1 Bigha vide sale deed dated 05.04.1963. Rest of the allegations were specifically denied. It was further alleged that earlier defendant No. 6 had filed a Civil Suit No. 575-A seeking a declaration that she is the owner in possession of the total land measuring one Bigha. That suit was dismissed vide judgment and decree dated 17.12.1992. Against this judgment and decree defendant No. 6 had filed an appeal also. However the appeal filed by defendant No. 6 was also dismissed on 02.06.1994. Thereafter, defendants No. 1 to 5 filed the suit for partition in respect of the house constructed over the suit land. That suit was decreed on 29.11.1997 and a preliminary decree was passed in favour of defendants No. 1 to 5. Defendant No. 6 filed further appeal against that preliminary decree. However the same was also dismissed by the Appellate Court on 28.03.2000. It was further pleaded that now an application for

passing final decrees is pending before the Court. It was still further pleaded that the present plaintiff and defendant No. 6 had every knowledge of all the facts including the passing of the preliminary decree and dismissal of the appeal filed by defendant No. 6. Hence the decree has been rightly and validly passed by the Courts below.

Parties led their respective evidence.

After hearing the parties and appreciating the evidence, the Trial Court dismissed the suit filed by the plaintiff. The Trial Court recorded a finding that the plaintiff was placing her claim on the judgment and decree dated 04.09.1986 which was a collusive decree. Vide this decree defendant No. 6 has transferred that land measuring 2 Biswas in favour of her grand son Munish Kumar. Since the value of the property was more than Rs. 100/-, therefore, the decree required compulsory registration. However, since the decree has not been got registered, therefore, the decree does not pass any title in favour of Munish Kumar and resultantly, in favour of the plaintiff. Still further the Trial Court held that the plaintiff has failed to prove the possession over the suit property. It was held that the decree itself does not show that the possession was handed over to the said Munish Kumar. Still further it was held by the Trial Court that since defendant No. 6 herself had filed a suit claiming to be owner in possession and the same was dismissed upto the Appellate Court, therefore, even defendant No. 6 was not held to be in exclusive possession of the suit property. Hence there can not be any possession of the same with the plaintiff. Regarding the plea of the plaintiff qua the partition decree having been passed behind her back, the Trial Court held that the suit for partition was filed on 17.03.1987 whereas the mutation in favour of Munish Kumar on the basis of the alleged

decree was entered only on 17.09.1987. Hence the name of Munish Kumar was not reflected in the revenue record and the decree was not in the knowledge of the plaintiffs at the time of filing suit for partition, therefore, no fault can be found with the fact that Munish Kumar was not impleaded as a party. Therefore, the preliminary decree of partition can not be set aside on the ground that the plaintiff or said Munish Kumar were not impleaded as a party to the suit. It was further held by the Trial Court that admittedly defendants No. 1 to 5 were having half share in the entire property and in the preliminary decree itself half share have been given to them, therefore, otherwise also the plaintiff can not be heard to have any grievance against defendants No. 1 to 5. Plaintiff claimed only through defendant No. 6 and in the preliminary decree defendant No. 6 had also been declared owner to the extent of half share. Hence the plaintiff had no cause of action. The Trial Court also recorded that admittedly the partition proceedings have not been concluded so far, therefore, plaintiff can participate in the proceedings by establishing her claim against defendant No. 6. Otherwise, the Trial Court held that the present suit is collusive in nature to prolong the proceedings of partition in collusion with defendant No. 6. Hence the suit was dismissed.

Aggrieved against this judgment and decree the plaintiff filed the appeal before the lower Appellate Court.

However, the lower Appellate Court also dismissed the appeal filed by the plaintiff by upholding the findings recorded by the Trial Court. While dismissing the appeal the lower Appellate Court recorded that the only point on which the plaintiff has approached the Court is that the Munish Kumar was not impleaded as a party in the partition proceedings

although he had become co-sharer by virtue of decree suffered by defendant No. 6 in his favour. However, the lower Appellate Court recorded that the Trial Court has rightly taken the view that suit for partition has been filed by defendants No. 1 to 5 on 17.03.1987 whereas the mutation in favour of Munish Kumar was entered only on 17.09.1987. So on the date of institution of the suit Munish Kumar was not recorded as a co-sharer in the suit property. Nor Munish Kumar was in possession of any part of the suit property as per own admission of defendant No. 6 in the partition suit. Still further plaintiff drew her title, if any, only from defendant No. 6 and defendant No. 6 have already been impleaded as a party. Despite that defendant No. 6 never disclosed the factum of decree in favour of Munish Kumar, therefore, there is nothing on record to show that defendants No. 1 to 5 had any knowledge of the decree in favour of Munish Kumar. The finding of the Trial Court on the point of compulsory registration of the decree in favour of Munish Kumar was also upheld by the lower Appellate Court. Still further it was held that, admittedly, defendant No. 6 has only half share in the suit property whereas in the written statement filed in the present suit she admitted the ownership of the plaintiff over the entire property, therefore, this shows the collusion between the plaintiff and defendant No. 6 just to delay the proceedings. Accordingly, the appeal was dismissed.

Aggrieved against the judgment and decree passed by the lower Appellate Court, the present appeal has been filed.

While arguing the case, learned counsel for the appellant has submitted that since the decree in favour of Munish Kumar qua the suit property had been suffered by defendant No. 6 and he had become a co-

sharer in the suit property, therefore, any proceedings for partition could not have been instituted without impleading the said Munish Kumar as a party. However, the partition proceedings have been filed without impleading him as a party. Hence the judgment and decree passed in partition proceedings are not binding upon either the Munish Kumar or his successor-in-interest the present plaintiff. To support his argument learned counsel for the appellant has relied upon the judgment, of the Hon'ble Supreme Court rendered in **(1997) 10 Supreme Court Cases 307** titled as ***Ram Krishan Ghosh and others vs. Roop Chand Molla and others***, judgment of this Court reported in **1989 PLJ 293** titled as ***Ram Mehar vs Surat Singh and others***, another judgment of this Court rendered in **1997(2) PLR 841** titled as ***Krishan Kumar Sharma vs. Ashok Kumar Sharma and another*** and some other judgments; which need not be multiplied, to contend that unless all the co-sharer in the suit property are impleaded the partition proceedings can not succeed and any decree passed in such partition proceedings would not be binding upon the rights of the co-sharer who was not impleaded as a party. Learned counsel has further submitted that the document, Ex:P-3; the mutation and the jamabandi Ex:P-4; have been produced on record by defendants No. 1 to 5 themselves in the partition proceedings, therefore, they had come to know of the decree in favour of Munish Kumar. So they should have impleaded Munish Kumar as a party, may be at a later stage.

However, on the other hand, learned counsel for the respondents/defendants No. 1 to 5 has submitted that the present appeal is the 9th proceedings being faced by them in the third round of litigation regarding the same suit property. Earlier defendant No. 6 had filed a suit for declaring her to be owner in possession. She lost in that venture upto High

Court. Thereafter, the partition proceedings were filed by the present respondents which are still pending, although upheld upto lower Appellate Court. Thereafter, just to delay the partition proceedings the present suit has been filed and they are facing the litigation before this Court in this third round. Accordingly; it is argued by learned counsel for the respondent that the entire effort of the plaintiff is just to delay the partition proceedings.

To counter the argument of learned counsel for the appellant, learned counsel for the respondents have argued that when the suit was filed no separate Khewat and Khatta was carved out in favour of Munish Kumar. Munish Kumar was not even entered into the revenue record as a co-sharer on the date of institution of the suit for partition. Still further it is submitted by learned counsel that the alleged decree in favour of Munish Kumar was suffered by defendant No. 6 during the pendency of her earlier suit filed for title by her only. Therefore, the decree in favour of Munish Kumar is a decree suffered when the subject matter was subjudice before the Court. Hence the said Munish Kumar would be bound by the result of that litigation. To Support his argument, learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court rendered in **2004(1) RCR (Civil) 216** titled as ***Bibi Zubaida Khatoon vs. Nabi Hassan Saheb and anohter***, judgment of the Hon'ble Supreme Court rendered in **2012(4) RCR (Civil) 308** titled as ***Vidur Impex and Traders Pvt. Ltd. and others vs. Tosh Apartments Pvt. Ltd. and others*** and some other judgments on the same point. Hence it is argued by the learned counsel for the respondent that the decree in favour of Munish Kumar, being suffered during proceedings before the Court, the same would be suffered by doctrine of *lis pendence* and thus conferring no better title upon him other than what was

given to defendant No. 6 in those proceedings.

Having heard learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that the arguments raised by learned counsel for the appellant are not sustainable in law. Learned counsel for the respondents/defendants No. 1 to 5 is right in relying upon the judgments mentioned above and to contend that the decree in favour of Munish Kumar did not confer upon him any better title than defendant No. 6; qua which she failed in the suit filed by her. Hence the decree in favour of Munish Kumar is hit by the doctrine of *lis pendence*. Otherwise, also there is no perversity in the finding recorded by the Courts below to the effect that the alleged decree in favour of Munish Kumar conveyed a fresh title in his favour regarding the suit property; which was valued more than Rs. 100/-. Hence unless the decree was registered, no title could have been passed in favour of said Munish Kumar and resultantly, in favour the present plaintiff. Assuming that there was some title in favour of Munish Kumar through decree in question, still, he was not required to be impleaded as a party in the partition suit since on the date when the partition suit was filed, his name was not reflected as a co-sharer in the suit property. Admittedly, the alleged mutation in his favour on the basis of the said decree was entered into much later and after filing of the partition suit. Otherwise also, since the plaintiff claimed titled only through defendant No. 6 and the defendant No. 6 has through out been a party in the partition proceedings, therefore, if the plaintiff had any grouse of not being represented in the partition proceedings then either the said Munish Kumar or the plaintiff could have moved an application for being impleaded as a party in the partition suit. However, no such step was taken by the plaintiff

to get into the partition proceedings. The Courts below are also right in holding that the present proceedings have been initiated by the plaintiff in collusion with defendant No. 6; just to prolong the partition proceeding. This is despite the fact that the defendant No. 6 has already failed in her six attempts before different Courts in different proceedings regarding the suit property.

Otherwise also, it is the admitted case of the plaintiff that the property in question was jointly purchased by defendant No. 6 and Smt. Santosh Kumari; the predecessor-in-interest of defendants No. 1 to 5. Hence admittedly defendant No. 6 had only half share in the suit property and the remaining half share belong to defendants No. 1 to 5. Admittedly, defendants No. 1 to 5 has been given only half share in the suit property in the preliminary decree of partition and the remaining half share has been given to defendant No. 6. Since defendant No. 6 has been contesting the proceedings right from the beginning and the plaintiff claimed only through defendant No. 6, therefore, no fault can be found with the partition proceedings on the ground that Munish Kumar or the plaintiff were not impleaded as a party in the partition proceedings. The judgments cited by learned counsel for the appellant are totally distinguishable on their own facts. In the present case, admittedly defendant No. 6 has been given her 50% share in the suit property in the preliminary decree. If the plaintiff intend to have any share out of the property going to defendant No. 6 then she could have join the partition proceedings by substantiating her claim against defendant No. 6 only. However, instead of joining the partition proceedings, the plaintiff chose to institute the present suit in her latest attempt to prolong the partition proceedings. Hence both the Courts below

have rightly dismissed the suit and appeal filed by the present
appellant/plaintiff.

No other argument was raised by learned counsel for the
appellant.

In view of the above, the present appeal fails and the same is
dismissed being devoid of any merits.

20th December, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*