

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

RSA No. 2745 of 2016 (O&M)

DATE OF DECISION : 30.10.2017

Kanwal Singh and another

.... APPELLANTS

Versus

Bhim Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Shilak Ram Hooda, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

1. The present regular second appeal has been filed by the defendants being aggrieved of the concurrent findings of the learned courts below decreeing suit of the plaintiffs for possession by way of partition and permanent injunction.

2. The parties are being addressed as per their original position in the plaint.

3. The plaintiffs preferred suit for possession by way of partition and permanent injunction. It was averred that a plot bearing No. 449/4 is situated within the abadi deh of village Gopalpur, Tehsil and District Sonapat. The said plot was carved out and allotted to the parties during partition of the village abadi deh. The detailed description of the plot was

given in the suit. It was pleaded that the plaintiffs and defendants are in possession of the plot as per their respective arrangement. The plaintiffs are in possession of western half portion of the said plot and the defendants are possessing the remaining eastern half. The parties have constructed their respective houses on each side leaving the middle portion as vacant. It was averred that though the plot was never partitioned by metes and bounds, but the parties by mutual consent were possessing their respective half share of the plot. The filing of the suit was necessitated as it was alleged that the defendants were forcibly trying to cover up area more than their half share. The suit was filed for possession of half share of the disputed plot by way of partition and for permanent injunction to restrain the defendants from raising construction upon the area more than their share in the said plot.

4. On notice, written statement was filed by the defendants.

5. The learned trial court framed issues.

6. The plaintiffs examined Sardar Singh as PW.1, Jai Bhagwan as PW.2 and Naresh Kumar as PW.3. Two site plans and copy of jamabandi were placed on record as Ex.P1, Ex.P2 and Ex.P3, respectively. Defendant No.1 Kanwal Singh appeared himself as DW.2.

7. After considering the evidence and hearing learned counsel for the parties, learned trial court decreed the suit ordering that “the present suit of the plaintiffs is decreed and the plaintiffs are declared as owners in possession of the half share of the suit property and the defendants are also collectively or also declared as the owners in possession of the half share of

the suit property. Also, defendants are restrained from raising any construction in the middle portion of the suit property till the final decree.”

8. Feeling aggrieved, appeal was filed by the defendants. The learned Additional District Judge, Sonapat, dismissed the appeal vide judgment and decree dated 25.01.2016 and upheld the judgment and decree passed by the learned trial court.

9. Hence, the present Regular Second Appeal at the hands of the defendants.

10. Learned counsel for the appellants argued that the courts below erred in decreeing the suit. He contended that the plaintiffs and the defendants are owners of the plot in dispute to the extent of half share each, as per the oral family partition. They have constructed their houses on each side of the plot on their respective shares. He further argued that even the oral partition has to be given effect. He prayed that the appeal be allowed and the judgments and decrees passed by the courts below be set aside.

11. It is important to note that certain issues have not been disputed by the parties at any stage. Firstly, that the plot bearing No. 449/4 situated within the abadi deh of the village was carved out and allotted to the parties during partition of the village abadi deh. Secondly, it is not disputed that the plaintiffs are in possession of western half portion of the plot and the defendants are in possession of eastern half portion of the plot. Thirdly, it is also not disputed that the plaintiffs and defendants have equal half share in the plot. The only dispute is as to (i) whether there was oral family partition;

and (ii) whether the defendants were possessing more than their half share in the plot.

12. So far as the second issue is concerned, it has come on record that DW.1 Kanwal Singh in his cross-examination admitted that 5-10 square yards excess land beyond their share of 414 square yards might be in their possession. Apart from this, during the arguments, learned counsel for the appellants submitted that the defendants are not in possession of excess land and even if it is so, they are ready to vacate the same and they have no grievance. It was alleged by the defendants before the learned trial court that the said plot was partitioned by an oral family partition which was given effect as the plaintiffs and defendants were possessing their respective shares. The parties failed to prove that any such family partition was there and the partition was done by metes and bounds in pursuance of such family arrangement. The suit property falls within the abadi deh. In the revenue record, there is no detail of possession or ownership. But this also creates no controversy as parties themselves are admitting that they are owners to the extent of one half share each in the suit property. There is no dispute regarding location of the share as it is also admitted that the plaintiffs are on western side and defendants are on eastern side. There appears to be no occasion to further go into this controversy. The courts below have decreed the suit declaring the plaintiffs as owners in possession of half share of the suit property and defendants have also been collectively declared as owners in possession of the half share of the suit property. Learned counsel for the

appellants (defendants) has fairly submitted during the course of hearing that the defendants have no grievance to vacate possession, if their possession exceeds half of their share.

13. Learned counsel for the appellants was specifically asked as to what is the exact grievance of the defendants at this stage, as there is no dispute with regard to ownership share in the suit property and even there is no dispute with regard to location of the share, as the parties have admitted their respective possession on the western and eastern sides of the plot. Learned counsel submitted that the only grievance of the defendants is that the suit should not have been decreed. However, he could not make out a case regarding the grievance arising on account of out of decreeing of the suit.

14. In the grounds of appeal of this appeal, five questions of law have been framed. While arguing the appeal, learned counsel for the appellants chose not to press all the questions, but he restricted his argument that once there was an oral family settlement, second partition could not have been ordered. There is no dispute on the legal position that even the oral family partition can be given effect to. There is no occasion to go into these issues in the present appeal, as there is no dispute on the issues mentioned in paragraph 11 above. The defendants have not been able to show any fault muchless to say any illegality in the judgments and decrees.

15. During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment

passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

16. The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

17. No other argument was raised.

18. Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

19. Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

October 30, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes