

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

RSA No.4277 of 2016 (O&M).
Decided on:-February 27, 2017.

Karam Singh.

.....Appellant.

Versus

Ajmer Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. S.P. Soi, Advocate
for the appellant.

HARI PAL VERMA, J.

Appellant-defendant, namely, Karam Singh (hereinafter called 'defendant No.1') has filed the present regular second appeal against the judgment and decree dated 27.07.2016 passed by learned Additional District Judge, Chandigarh whereby the appeal filed by the respondent-plaintiff against the judgment and decree dated 20.10.2014 passed by learned Civil Judge (Junior Division), Chandigarh, was allowed.

Vide judgment and decree dated 20.10.2014, learned trial Court had dismissed the suit filed by the respondent-plaintiff for partition and permanent injunction restraining the defendant No.1 from alienating, transferring or handing over the physical possession of any part of the premises in dispute.

Briefly stated, the respondent-plaintiff had filed a suit for partition against the defendants with an averment that the plaintiff is a son of

late Niranjana Singh, whereas defendants No.1 to 4 are his real brothers. Though defendant No.5 was also his brother, but he is no more survived and, therefore, his legal heirs i.e. defendants No.5(a) and 5(b) are impleaded. Defendants No.6 to 8 are the sisters. The mother of the plaintiff has also expired. The suit property i.e. the house as described in the plaint was owned by the father of the plaintiff and defendants No.1 to 4. He had executed a Will dated 02.09.1984 attested by witnesses, whereby he had desired that his entire property should be divided amongst his sons. In the year 1996, all the sons had written a letter to the Notified Area Committee, Manimajra, Chandigarh to transfer the suit house in their joint names. An affidavit was also executed by all the brothers. Since the defendant No.1 (appellant) threatened that he will dispose of the share more than he is entitled for i.e. more than $\frac{1}{6}^{\text{th}}$ share despite having no such right and had tried to dispossess the plaintiff from his possession, the plaintiff had filed the instant suit seeking partition and permanent injunction.

The defendant No.1 (appellant) filed written statement taking preliminary objections regarding maintainability and non-joinder. It was further averred that the suit house is owned by the appellant-defendant No.1 and the plaintiff has no concern with the same. So far as the Will dated 02.09.1984 is concerned, the same is a false and fabricated document and does not relate to the suit property. No Objection Certificate was issued by the Municipality which indicates the name of the appellant-defendant No.1 as owner. It was denied that defendant No.1 has an intention to sell the house though he is otherwise competent to do so.

On the basis of pleadings of the parties, following issues were

framed by learned trial Court:

1. Whether the plaintiff is entitled for a decree by way of partition by metes and bounds of the House No.734, Mohalla Dera Sahib, Manimajra, U.T. Chandigarh? OPP
2. Whether the present suit is not maintainable? OPD
3. Whether the plaintiffs have not approached the court with clean hands? OPD
4. Whether the plaint is not verified as per Order VI Rule 15 CPC? OPD
5. Whether the plaintiffs have claimed contradictory reliefs and thereby tried to mislead the court? OPD
6. Relief.

Vide judgment and decree dated 20.10.2014 learned trial Court had dismissed the suit of the plaintiff by holding that the Will which has been produced on record by official witness PW3 is unregistered. Moreover, the same has not been proved in due course of law as none of the attesting witnesses were examined in the case. Since the simple suit for partition was not maintainable as declaration was required to be sought qua ownership of the suit house. The plaintiff cannot be allowed to get the suit house partitioned merely on the ground that the same vested upon the parties on the basis of an unregistered Will especially when the defendant No.1 is contesting the claim of the plaintiff.

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the respondent-plaintiff filed an appeal and the said appeal was accepted by learned Additional District Judge, Chandigarh vide judgment and decree dated 27.07.2016. As a consequence thereof, suit of the respondent-plaintiff was decreed to the extent that he is entitled for share

after partition of the suit property. Further, the suit for permanent injunction was also decreed restraining the defendant No.1 to alienate the property to any other person except his share. The relevant para No.11 of the judgment passed by learned lower appellate Court reads as under:

“11. In this case during the course of adducing evidence plaintiff-appellant stepped into witness box as PW.1 and proved his affidavit Exhibit PW1/A along with various documents stating all the facts as taken in the plaint. In cross-examination nothing untoward has been stated by him. Another witness in this case is Joginder Paul, Revenue Accountant, Electricity Office, Dub Division No.8, Manimajra PW.2 who brought the record regarding electricity connection in the name of appellant but that is not proving ownership of property. Material evidence in this case is of Devinder Singh, Clerk, Sub Division Office, Manimajra, U.T., Chandigarh PW.3 who brought the record from the office Exhibit PW3/1 to Exhibit PW3/16. He has categorically stated that this property is in the name of Niranjana Singh. Niranjana Singh is father of appellant and respondent No.1. Other respondents No.2 to 10 have admitted the claim of plaintiff. Although respondent No.1 Karam Singh has disputed this fact of ownership of plaintiff-appellant and rather he has claimed his own ownership but in this case neither he stepped into witness box to depose for supporting his pleadings nor examined any other witness, reasons best known to him. In additional evidence as brought on record before this Court certified copy of judgment passed by learned trial Court wherein respondent has claimed ownership on the basis of one no objection certificate as issued by Electricity Board at the time of release of electricity connection in the name of respondent and claim is declined. As per oral evidence in the present case, plaintiff-appellant has admitted that property is

not in his name but documents itself speaks that property was mutated in the name of Niranjana Singh. In this regard letter Exhibit PW3/4 is there by the Secretary, Notified Area Committee as addressed to Niranjana Singh Saini father of parties vide which intimation was given that this property has been mutated in his name as owner. The case of appellant is that this property was ancestral property as earlier it was in the name of Amar Singh. Although appellant has stated in this case that Will has been executed by Niranjana Singh Saini in favour of plaintiff and defendants No.1 to 5 and copy of Will has been got produced from office. The attesting witnesses of Will has not been examined and in my view, the Will has not been proved on record. It is, however, established that property was earlier owned by Niranjana Singh. It is admitted fact that parties i.e. plaintiff and defendants No.1 to 5 are sons of deceased Niranjana Singh. Defendants No.6,7 and 8 are daughters of Niranjana Singh. It is also admitted fact that wife of Niranjana Singh had since died. If Will is not proved then law is settled that property has to devolve upon legal heirs of Niranjana Singh as per law. Succession cannot be kept in abeyance and property has been devolved upon all the legal heirs immediately at the time of death of Niranjana Singh. The plaintiff has filed suit before the trial Court on the basis of the fact that he is co-sharer of the property and further sought the partition by metes and bounds as per his shares and relief of injunction has been sought against defendant No.1 from alienating the property in any way till partition took place. The learned trial Court has not properly appreciated the evidence regarding the ownership in the name of Niranjana Singh. Even if oral evidence has not properly come on record, the documentary evidence has to prevail. The respondent No.1 has not produced on record any document to say that he is owner of the property in dispute. So, if the property was earlier owned by father of parties and after

his death same has been devolved upon all the legal heirs of Niranjana Singh. Appellant and respondent No.1 are one of the legal heirs. So, certainly appellant is entitled for his share from the property. As regards partition rules that is certainly applicable as prevailing in U.T., Chandigarh, that has to be seen at the time of passing final order of partition but in the preliminary decree of partition it has to be established that natural heirs of Niranjana Singh are share holders in the property in dispute. Once appellant has his share in the property along with other co-sharers then one of the co-sharer Karam Singh has no right to alienate the property to any other person except his own share. So, the findings of learned trial Court is against the evidence and law and same is hereby reversed. I hereby return the findings that appellant is entitled for partition by metes and bounds to get his share out of the property. In this view, I hereby accept the present appeal and consequently, suit of plaintiff is hereby decreed to the extent that he is entitled for share after partition of the property and further suit for permanent injunction is also decreed restraining the defendant No.1 to alienate the property to any other person except his share. Decree sheet be accordingly prepared. Record of trial Court be sent back along with copy of this judgment. Appeal file be consigned to the record room.”

Aggrieved against the judgment and decree dated 27.07.2016 passed by learned lower appellate Court, the appellant-defendant No.1 has filed the present regular second appeal.

Learned counsel for the appellant-defendant No.1 has argued that the lower appellate Court has passed a cryptic judgment and decree ignoring the righteous pleadings of the appellant-defendant No.1 and that of the respondent-plaintiff. The lower appellate Court has held that the property

in question is ancestral without there being any pleading qua that issue. Whereas the case of the respondent-plaintiff was that Niranjn Singh had executed a Will regarding the suit property without pleading in the plaint that Niranjn Singh was owner of the same. The finding of learned trial Court that the appellant-defendant No.1 has not produced on record any document to show that he is owner of the property is also wrong as documents Ex.D1 and Ex.D2 i.e. certificate of ownership and site plan submitted for securing sewerage connection by the appellant have not been read by the lower appellate Court. Perusal of these documents shows that the appellant-defendant No.1 is owner of the suit property.

He has further argued that the respondent-plaintiff has failed to prove his ownership or possession in the trial Court despite exhibiting an affidavit Ex.PW2/4. Even in the affidavit, he has nowhere stated that he is owner of the house in question, rather his limited pleading is that his possession has been shown in red area in the site plan Annexure P-1. Still, without elaborating the whole evidence of the parties, the lower appellate Court has adopted a selective method by using certain documents of the plaintiff which have otherwise not been proved in accordance with law. The documents Ex.D1 and Ex.D2 are sufficient to establish that the appellant-defendant is exclusive owner in possession of the suit property. PW3, an official witness from the Notified Area Committee, Manimajra, U.T., Chandigarh, in his cross-examination, has deposed that letter Ex.D1 had been issued from his office on 01.07.1991. As per this document, appellant-defendant No.1 Karam Singh is owner of the suit property.

I have heard learned counsel for the appellant-defendant No.1

and perused the record.

So far as the document Ex.D1 dated 01.07.1991 is concerned, the same was issued by the Executive Officer, Notified Area Committee, Manimajra, U.T., Chandigarh and was addressed to the Junior Engineer, Electricity Department, Manimajra though with a copy forwarded to the appellant-defendant No.1. This document relates to the No Objection Certificate for the purpose of electricity connection in Manimajra. In para No.2 of the said communication, it has been mentioned that the document dated 01.07.1991 certifies the ownership of House No.734 in the name of appellant-defendant No.1, but said document is not the conclusive evidence regarding ownership of the appellant-defendant No.1 regarding the suit property.

Since the house in question was wrongly shown in the name of Amar Singh son of Niranjana Singh, therefore, a joint affidavit Ex.P3/1 was submitted by Niranjana Singh Saini, i.e. father of the appellant-defendant No.1 as well as the respondent-plaintiff, along with Amar Singh son of Niranjana Singh (brother of the appellant-defendant No.1) to the effect that Niranjana Singh is the real owner of House No.734, Manimajra. In support, document Ex.PW3/3 showing the particulars of ownership of House No.734 in Mohalla Dehra Sahib, Manimajra were also filled up by said Amar Singh. The change of ownership which was wrongly entered in the name of Amar Singh was duly rectified by document Ex.PW3/4 which is reproduced as under:

“From

*The Secretary,
Notified Area Committee,*

Manimajra (U.T. Chandigarh)

To

*Sh. Naranjan Singh Saini,
s/o Sh. Daya Ram H. No.734
Manimajra (U.T. Chandigarh)*

Memo No.NAC-84/66/7

Dated, Manimajra the:- 10-12-84

Subject:- Change of Ownership of House No.734.

*Reference your application dated 28.8.84 on the
subject noted above.*

*2. In view of the affidavit submitted by you and your
son Sh. Amar Singh, The President, Notified Area Committee,
Manimajra is pleased to change the Ownership of House
No.734 in your favour.*

*Secretary,
Notified Area Committee,
Manimajra (U.T. Chandigarh)”*

In this manner, vide letter dated 10.12.1984 ownership of the house in question was changed in the name of Niranjan Singh Saini i.e. father of the respondent-plaintiff and defendants No.1 to 5. The appellant-defendant No.1 has tried to impress upon this Court with the support of affidavit of Davender Singh, Clerk, PW3 and the document Ex.PW3/1. Since the appellant-defendant No.1 has not produced on record any document to prove that he is owner of the property in dispute and once it is established that the property was earlier owned by the father of the respondent-plaintiff and defendants No.1 to 5, namely, Niranjan Singh, after his death, the same is deemed to have devolved upon all the legal heirs of Niranjan Singh.

The appellant-defendant No.1 and the respondents-plaintiffs are

the legal heirs of Niranjana Singh. Therefore, the appellant-defendant No.1 is entitled for his proportionate share in the suit property. So, once it is established that the respondent-plaintiff has his share in the property along with other co-sharers, then the other co-sharers including the present appellant-defendant No.1 have no right to alienate the suit property to any other person except his own share.

Therefore, this Court does not find any illegality in the impugned judgment and decree passed by learned lower appellate Court wherein it has been held that the respondent-plaintiff is entitled for his share after partition of the property. Accordingly, the appellant-defendant No.1 was rightly restrained from alienating the suit property to any other person except his share.

No other point is argued.

No substantial question of law is involved in the present regular second appeal. Accordingly, the impugned judgment and decree dated 27.07.2016 passed by learned lower appellate Court is affirmed and the present regular second appeal is dismissed.

February 27, 2017

Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No