

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2952-2015(O&M)

Date of Decision:20.03.2017

Lal Chand

.....Appellant

Versus

Govind Lal @ Gobind Ram and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Harkesh Manuja, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Instant regular second appeal, at the hands of unsuccessful defendant, is directed against the impugned judgment and decree dated 16.04.2015 passed by the learned District Judge, whereby first appeal of the defendant was dismissed and the impugned judgment and decree dated 22.05.2014 of the learned trial Court, decreeing the suit for separate possession by way of partition with consequential relief of permanent injunction filed by the plaintiffs, were upheld.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that parties to the suit were co-sharers in a double storeyed building bearing municipal No. 49, situated within the M.C. Limits, ward No.9 (old Subji Mandi, Gohana) measuring 150.79 Sq. yards, shown in the site plan marked by letters ABCD and EFGH. The boundaries of the said building are as under :

West : Shops of Municipal Committee and Rasta

North : Rasta old Subji Mandi

South : House of Hari Chand

It had been further pleaded that the suit property came into the share of the parties to the suit in a family partition, which was confirmed in a judgment and decree passed by the court of the then learned Addl. Senior Sub Judge, Gohana, vide Civil suit No. 22 of 1993 decided on 06.04.1993 and the share of the parties are as under :

Plaintiffs No.1 to 4 were owners in possession of the suit property to the extent of 1/2 share in equal share. Plaintiff No.5 was owner in possession of 1/6 share. Defendant was owner in possession of 1/3 share.

It had been further pleaded that by passage of time, value of the suit property had been increased and relations of the parties had also become strained and it had been become very difficult for the parties to use the said property like a gentleman and the outcome of the said property was not being divided equally as per the shares. It had been pleaded that a dispute had arisen amongst the parties to the suit and it had become very difficult for the parties to use the said property jointly due to the strained relations of the parties, and it had become a necessity of time to divide the suit property between the parties to the suit according to its value, utility, area, and share as it was a commercial property and every inch of the property was very precious. It had been further pleaded that plaintiffs many times requested the defendant to divide the suit property and give separate share to plaintiffs and get his 1/3 share separated from plaintiffs' share over the suit property, but the defendant remained adamant and did not pay any heed to the request

of plaintiffs and finally refused to accede the request of the plaintiffs on 14.02.2010, so, this necessitated to institute the present suit.”

Having been served in the suit filed by the plaintiffs, defendant put appearance and filed his written statement, raising more than one preliminary objections. Replication was filed by the plaintiffs. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to a decree of partition? OPP*
- 2. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 5. Whether plaintiffs have concealed true and material facts? OPD*
- 6. Relief.”*

With a view to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have duly proved their case for separate possession by way of partition with consequential relief of permanent injunction. Accordingly, suit was decreed by the learned trial Court vide its impugned judgment and decree dated 22.05.2014. Feeling aggrieved, defendant filed his first appeal which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 16.04.2015. Hence, this regular

second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

The entire case of the appellant-defendant was based on alleged family settlement. Further, defendant-appellant did not appear in the witness box for the reasons best known to him. It was his pleaded case that he became owner of the suit property in terms of family settlement, however, he did not make any effort to prove the alleged family settlement by way of leading appropriate evidence. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their respective jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Plaintiffs-respondents have duly proved their case by leading cogent and convincing evidence. Earlier judgment and decree dated 16.04.1993, Exs.P2 and P3 have proved to be a clincher in favour of the plaintiffs-respondents and against the defendant-appellant. It was pleaded and argued case on behalf of the appellant-defendant that a family settlement took place after the abovesaid judgment and decree dated 16.04.1993. However, neither any such family settlement was produced on record nor it could be proved by the defendant-appellant by way of any other supportive evidence. Instead of appearing as his own witness before the Court, defendant examined his special power of attorney Manoj Kumar, who would obviously not be aware about the alleged family settlement. Under these circumstances, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, learned first appellate Court re-examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The cogent findings recorded by the learned District Judge in para 12 of his impugned judgment, which deserves to be noticed here, reads as under:-

“No doubt as urged by learned counsel for the appellant/defendant Lal Chand that the present suit pertains to partition of area measuring 150.79 Sq. yards, whereas in the sale certificate Ex.D-3, the area has been shown as 147.78 Sq. yards and in the judgment and decree dated 16.04.1993 the area has been shown as 161/1/3 Sq. yards. Yet this difference in the area as pointed out by the learned counsel for the appellant/defendant does not make the preliminary decree unspecific and vague regarding the area to be partitioned, as the plaintiffs have sought the partition on the basis of judgment and decree dated 16.04.1993 and a perusal of that judgment and decree dated 16.04.1993 reveals that Kanhaiya Lal has been declared owner to the extent of ½ share, Gian Chand as owner to the extent of 1/6 share and Lal Chand as owner to the extent of 1/3 share and in that share, the preliminary decree has been passed by learned trial court in respect to the suit property existing at the spot. It is pertinent to mention here that the difference in the area of suit property i.e. 150.79 Sq. Yards or 147.78 Sq. yards or 161/1/3 Sq.yards occurred due to different measurement. However, it may be added here that the partition has been sought of the property relating to sale certificate Ex.D-3 and judgment and decree Ex.P-2, and Ex.P-3 and in the judgment and decree Ex.P-2 and Ex.P-3 plaintiffs No.1 to 4 are held entitled to 1/8 share each, plaintiff No.5 is held entitled to 1/6 share and defendant is held entitled to 1/3 share as has been determined by learned

lower court.”

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court as well as this Court in **Uma Shashi Devi (D) through LRs Versus Dibakar Banerjee and others**, 2012 AIR (SC) 3153; **Bhupinder Singh and others Versus Roop Singh and another**, 2010(8) R.C.R.(Civil) 788; **Inder Sain and another Versus Tika Ram (since deceased) through LRs and others**, 2010(65) R.C.R.(Civil) 480 and **Mohinder Singh and another Versus Devi Lal and others**, 2012(26) R.C.R.(Civil) 200.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In fact, both the impugned judgments and decrees passed by the learned Courts below have been found based on sound reasons, which deserve to be upheld. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others**, 2009 (2) RCR (Civil) 286 and **Santosh Hazari Versus Purshottam Tiwari**, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of

merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

March 20, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No