

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4660 of 2015
Date of decision:20.4.2017**

Parkash Kaur

...Appellant

Versus

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.B.S.Randhawa, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant No.3 is in regular second appeal against the concurrent findings of facts, recorded by both the learned courts below, whereby suit for permanent injunction filed by the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 7.5.2014 and two identical appeals filed by the defendants were dismissed by the learned District Judge, vide his common judgment and decree dated 24.2.2015.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiff filed a suit for permanent injunction, restraining the defendants from raising any sort of construction in the suit land measuring 52 Kanals 2 Marlas fully detailed in the head note of plaint without getting the same partitioned, on the averments that plaintiff had 3/70 share in the suit land and Dalip Singh had 1/30 share therein and he transferred 22/ 3/4 / 1042 share out of suit land in favour of defendants No.1 and 2 and 12/1042 share in favour of

defendant No.3 and plaintiff was joint owner and in joint possession to the extent of 3/70 share out of suit land and suit land was joint of parties along with other co-sharers and had not yet been partitioned. It was averred that said Dalip Singh nor defendants were in exclusive possession over any portion out of suit land and now the defendants without any right, were intending and threatening to cover up the superior portion out of suit land by raising construction therein.

Having been put to notice, defendants No. 1 and 2 appeared and filed their written statement, denying the averments taken by the plaintiff in the plaint. Defendant No.3-appellant herein filed her separate written statement, contesting the suit. Replications were filed by the plaintiff to both the written statements.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the injunction prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the defendants are in exclusive possession over any portion in the joint holding if so its effect? OPD.
4. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, suit of the plaintiff for permanent

injunction was decreed, vide impugned judgment and decree dated 7.5.2014.

Two identical appeals were filed by the defendants, out of which, one was filed by present appellant-defendant No.3. Both these identical appeals came to be dismissed by the learned District Judge, vide his common impugned judgment and decree dated 24.2.2015. Hence this regular second appeal, at the hands of unsuccessful defendant No.3.

Heard learned counsel for the appellant.

As per relevant jamabandi Ex.P1, it was duly proved on record that the suit property was joint and unpartitioned. However, the pleaded and argued case on behalf of defendant-appellant was that the suit land had been orally partitioned long back. It is also not in dispute that the alleged oral partition never came to be incorporated in the relevant revenue record. Further, defendants contradicted themselves, by taking different and self-contradictory stand in their pleadings and evidence. It was pleaded by Balwinder Singh-defendant in his written statement that the suit land had been partitioned orally about 40 years back, whereas when he appeared as DW-2 before the learned trial Court, he deposed that the suit land was orally partitioned about 7-8 years back.

Similarly, the present appellant, while appearing as DW-1, admitted that she purchased the share from her vendor in the entire khewat and she would have no objection to the partition of joint khewat. This is further corroborated from sale-deed Ex.D2, whereby present appellant purchased the portion of the joint land from her vendor Dalip Singh, original owner, who sold part of his share in the joint property. Having said that, this Court feels no hesitation to conclude that both the learned courts

below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1. Sakahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karalhe, 2002 (9) SCC 608;***
- 2. Shakuntala Vs. Lt.Col. Mukhtiar Singh and others, 2008 (11) SCC 42;***
- 3. Ved Parkash Vs. Sunder and others, 2009(1) CivCC 114 (P&H);***
- 4. Karam Singh and another Vs. Lakhbir Kaur and others, 2011 (3) CivCC 162 (P&H);***
- 5. Jangir Singh Vs. Naranjan Singh and others, 2015 (1) CivCC 315 (P&H).***

Basic fallacy in the pleaded and argued case on behalf of the defendant-appellant was that she wanted the courts to give preference to oral partition, while ignoring the documentary evidence, wherein it was recorded that the suit land was unpartitioned and joint. When confronted with this basic and crucial aspect of the matter to justify the stand taken on behalf of the defendant-appellant, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Despite making his best efforts, learned counsel for the appellant could not improve the case of the appellant for want of relevant and sufficient material. Under these facts and circumstances of the case noticed hereinabove, it can be safely concluded that both 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 its judicious conclusion, the learned first

appellate court examined, considered and appreciated true facts of case as well evidence available on record in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“After considering the rival contentions and perusing the record, it transpires that the plaintiff while appearing as PW1 has reiterated the averments made in the plaint on oath and has categorically deposed that the suit property is joint and unpartitioned and has also placed on record Jamabandi Ex.P1 to prove this fact. On the other hand, the defendants have come up with the version that suit property has been partitioned orally many years back. Even the appellant Surjit Kaur claims to have purchased portion of the suit property vide sale deed Ex.D2. The perusal of Jamabandi Ex.P1 reveals that the suit property is still joint and unpartitioned, although the defendant claimed the suit property to be partitioned orally, but admittedly this fact has never been incorporated in the revenue record and entire land is still cover by a single Khewat number, which amply proves the fact that the suit property is still joint and unpartitioned and this in a way controverted the version of the defendants. Even, it has been rightly observed by the learned trial Court that the witnesses examined by the defendant discrepant qua such oral partition. As according to the defendant/appellant Balwinder Singh, while appearing as DW2, the oral partition took place about 7-8 years back, whereas in the pleadings, he has alleged the oral partition to have taken place about 40 years back. This fact is even corroborated from the version put forth by defendant/appellant Parkash Kaur while appearing as DW1, as she admitted having purchased the share from the vendor in the entire khewat and that she has no objection to the partition of entire khewat. Even otherwise, from the perusal of sale deed Ex.D2, whereby Parkash Kaur appellant had purchased the portion of the land reveals that Dalip Singh, original owner,

had sold part of his holding as share in the property i.e. 12/1042 share and had not sold any specific portion and this fact also belies the contentions of the appellants regarding the suit property being partitioned. Further more, the respondent has placed on record the fact that the partition proceedings are still going on before the revenue authority. As a consequent, it is rightly concluded by the learned trial Court that the suit property is joint and unpartitioned between the parties. In case the defendants succeeded in raising construction in the joint holding, then the plaintiff would have suffer irreparable loss and injury and as such, learned trial Court has rightly passed the impugned judgment and decree thereby granting permanent injunction restraining the defendants from raising any construction in the suit property without getting the same partitioned in accordance with law. No infirmity or illegality could be observed in the impugned judgment and decree.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

20.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No