

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

RSA No.6500 of 2016 (O&M).  
Decided on:-February 07, 2017.

Rohtash and another

.....Appellants.

Versus

Mahender and others

.....Respondents.

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

Present:- Mr. Harish Bhardwaj, Advocate  
for the appellants.

**HARI PAL VERMA, J.**

Appellants-defendants No.2 and 3 have filed the present regular second appeal against the judgment and decree dated 30.05.2016 passed by learned Additional District Judge, Jhajjar whereby their appeal against the judgment and decree dated 21.09.2013 passed by learned Additional Civil Judge (Senior Division), Jhajjar, was dismissed.

Vide judgment and decree dated 21.09.2013, learned trial Court has allowed the suit filed by respondents No.1 and 2/plaintiffs for possession by way of partition of the suit land fully detailed in para No.1 of the plaint.

Briefly stated, the respondents No.1 and 2/plaintiffs filed a suit for possession by way of partition of the joint Khewat against the appellants-defendants No.2 and 3 as well as defendant No.1 Shri Chand (represented through his legal heirs) with averments that the plaintiffs along with

defendants are joint owners of the land comprised in Khewat No.726/669, Khata No.829, Khasra No.297 measuring 1 Kanal 0 Marla situated at village Dadri Toe. The plaintiffs have purchased share of Shiv Kumar son of Chitru as 1/7<sup>th</sup> share in the total land and remaining plot is owned by the defendants. But the defendants want to take possession of more than their permissible share, which is illegal. The plaintiffs requested the defendants many a times to get the property partitioned and not to encroach upon more than their share, but the defendants did not accede to their request. Resultantly, present suit was filed.

On notice having been issued, the appellants-defendants No.2 and 3 as well as defendant No.1 Shri Chand filed their written statement claiming therein that the defendants are owners in possession of the land and they have constructed their houses for the last about 30 years. They had purchased the plot on 06.10.1986 for Rs.1,000/- and are in possession of the entire property. Therefore, the question for encroaching upon more than their permissible share does not arise.

On the basis of pleadings of the parties, following issues were framed by learned trial Court:

1. Whether the plaintiff is entitled for decree of possession by way of partition of the suit property, on the ground alleged in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the suit of the plaintiff is time barred? OPD
4. Relief.

Learned trial Court vide judgment and decree dated 21.09.2013 decreed the suit of respondents No.1 and 2/plaintiffs with the observations

that appellant-defendant Raj Kumar son of Shri Chand (DW1) has clearly admitted that the plot in dispute was purchased by his father Shri Chand and that his brother Shiv Kumar is owner to the extent of 1/7<sup>th</sup> share. Even Kewal Singh Saini, deed-writer (DW2) of agreement dated 06.10.1986 (Ex.D2) has admitted that Shiv Kumar son of Chatru was a co-sharer in the said property. It was held that there being a clear admission of the defendants that the vendor of plaintiff, namely, Shiv Kumar was owner to the extent of 1/7<sup>th</sup> share in the property and the property has not been partitioned so far. Therefore, the plaintiff was entitled for possession by way of partition of his 1/7<sup>th</sup> share purchased from Shiv Kumar.

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellants-defendants No.2 and 3 filed an appeal before the lower appellate Court, but the same was also dismissed by learned Additional District Judge, Jhajjar vide judgment and decree dated 30.05.2016.

It is in the aforesaid circumstances, the appellants-defendants No.2 and 3 have filed the present regular second appeal.

The appellants-defendants No.2 and 3 have formulated the following substantial questions of law:

- i. Whether the evidence beyond pleadings is liable to be rejected?
- ii. Whether a document which has not been proved in accordance with law can be taken into consideration by the Courts below while decreeing the suit of the plaintiff?
- iii. Whether the suit can be decreed when the oral as well as documentary evidence are contradictory to each other?
- iv. Whether the suit of the plaintiff can be decreed when the

identity of the property is not established?

- v. Whether both the judgments and decree passed by Courts below are perverse, illegal, null and void and liable to be set aside?

Learned counsel for the appellants-defendants No.2 and 3 has argued that the Courts below have not appreciated the pleadings of parties as well as the evidence on record. The respondents No.1 and 2-plaintiffs have laid their claim on the plot in question on the basis of mutation sanctioned on 03.10.2008. But they have not mentioned in their plaint qua any sale deed. The trial Court has relied upon sale deed Ex.P4 while decreeing the suit, but the said sale deed has not been proved in accordance with the Indian Evidence Act, 1872. The respondents-plaintiffs have stepped into the shoes of Shiv Kumar son of Chitru through Intkaal (mutation). But the mutation does not confer or extinguish any title in the property and, therefore, the sale deed which has been produced by the respondents-plaintiffs has not been proved as per law. The sale deed is not a document which is *per se* admissible in evidence and it is required to be proved in accordance with law. The respondents-plaintiffs were required to stand on their own legs to get the suit decreed.

He has further argued that the plaintiffs have neither examined Shiv Kumar from whom they have claimed to have purchased the property nor they have impleaded him as a party. The share of Shiv Kumar has already been sold by his guardian in favour of the appellants-defendants No.2 and 3 vide agreement to sell dated 06.10.1986 Mark-A. Therefore, the suit of the respondents No.1 and 2-plaintiffs was liable to be dismissed.

I have heard learned counsel for the appellants-defendants No.2

and 3 and perused the record.

In order to prove their case, one of the respondents-plaintiffs, namely, Rame was examined as PW1 who corroborated the contents of the plaint. Even PW2 Ram Kanwar also supported the version of respondents-plaintiffs. The respondents-plaintiffs have purchased 1/7<sup>th</sup> share of Shiv Kumar by way of sale deed dated 08.08.2008, whereas the appellants-defendants No.2 and 3 have relied upon sale deed dated 06.10.1889 Ex.D-2 claiming that the entire property in question is owned by them. But as per sale deed Ex.D2, they have purchased only 2/7<sup>th</sup> share i.e. only 6 Marla land out of the total land.

Perusal of the record shows that the agreement to sell dated 06.10.1986 Mark-A relied upon by the appellants-defendants has not been proved as per the requirement of the Indian Evidence Act, 1872. Even otherwise, the document mark-A is only an agreement to sell and has not culminated into sale deed. This document is not a document of title and as such, the appellants-defendants cannot derive any benefit from this document.

Moreover, it is admitted by the appellants-defendants that at the time of execution of agreement to sell Mark-A, Shiv Kumar was minor. As per Section 8(2)(a) of the Hindu Minority and Guardianship Act, 1956, a natural guardian cannot mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor without the previous permission of the Court.

The appellant No.2-defendant Raj Kumar while appearing in the witness box as DW1 has admitted that the plot in question was purchased

by his father Shri Chand. He has further admitted that Shiv Kumar is owner to the extent of 1/7<sup>th</sup> share of the plot in question. Similarly, DW2 Kewal Singh Saini, deed-writer has also admitted that Shiv Kumar is co-sharer in the property. DW2 has also admitted that Shiv Kumar is owner of 1/7<sup>th</sup> share and the said share is purchased by the respondents No.1 and 2/plaintiffs. The appellants-defendants No.2 and 3 have not brought any cogent evidence to show that the guardian of Shiv Kumar could dispose of the 1/7<sup>th</sup> share of Shiv Kumar in the property in question. The appellants-defendants have also failed to bring on record any cogent evidence to the effect that the guardian/Karta of Shiv Kumar has executed the agreement to sell Mark-A with the prior permission of the Court. Therefore, the appellants-defendants have failed to prove that Shiv Kumar was not owner of 1/7<sup>th</sup> share in the suit property.

Both the Courts below have recorded concurrent findings and no fault can be found in the impugned judgments and decrees passed by the Courts below. No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

**February 07, 2017**

Yag Dutt

**(HARI PAL VERMA)  
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No