

RSA No. 5228 of 2015 (O&M)

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

RSA No. 5228 of 2015 (O&M)

Date of Decision: 7.9.2017

Baljit (since deceased) through LRs and others

.....Appellants

Vs.

Satpal and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. A.K. Jain, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned courts below, decreeing the suit for permanent injunction filed by the plaintiff-respondent, defendants have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that respondent filed the suit for permanent injunction against the appellants with the averments that he was a permanent resident of Village Dehkora, Tehsil Bahadurgarh, Distt. Jhajjar. Appellant No.1 (since deceased, now represented by his LRs) was his real brother, appellant No.2 was his father, appellant No.3 was his mother and appellant No.4 was the widow of his brother Baljit-appellant No.1. Respondent alleged that earlier, his father-appellant No.2 was the owner in possession of the Ghair Mumkin Bara bearing Khewat No.289/265, Khatoni No.401, Rect.and

Killa Nos.36/17/40 measuring 3 Marla, situated in the revenue estate of Village Dehkora, Tehsil Bahadurgarh, Distt. Jhajjar. Some years ago, he and appellant No.2 had constructed a house on the said Bara from their income. Apart from this, he-appellant No.1, alongwith Rajbir, purchased a plot in the year 1990 bearing Khewat No.290/266, Khatoni No.402 in the name of Rajbir. However, the sale consideration was paid from the joint income of the family and the said plot was also a joint family property.

In the first week of February, 2008, appellants No.1 to 3 and Rajbir orally partitioned the above mentioned properties. According to the oral family partition, northern half portion of the house in question was allotted to him-respondent and southern half portion of the same was allotted to appellant No.1 and plot No.199 was allotted to Rajbir. On the plot allotted to Rajbir, he constructed a house. However, Rajbir, at the instance of appellants No.1 and 4, started ill-treating his wife and children and in order to deprive them of their legal rights, he in collusion with appellants No.1 and 4, sold his house to them (appellants No.1 and 4) without any sale consideration. Thereafter, appellants No.1 and 4 started residing in the house of Rajbir. When respondent objected to the activities of his brother Rajbir, appellants became inimical to him and threatened to dispossess him from the northern half portion of the house shown by letters ABCD in the site-plan attached with the plaint. Respondent also alleged that appellants were hot headed persons and were bent upon to oust him from the northern half portion of the house which was allotted to him for the family partition and wanted to interfere in the use of the said house. He requested the appellants not to interfere in his possession. However, appellants were adamant and they finally refused on 22.5.2009 to accede to his request. On these facts, he filed the suit for a decree for permanent injunction restraining the

appellants from interfering in his possession and ownership over the northern half portion of the house shown by letters ABCD in the site plan filed by him with the plaint and restraining the Appellants from dispossessing him from the same.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to the relief of permanent injunction on the grounds as alleged in the plaint?OPP.
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD.
4. Whether the Civil Court has got no jurisdiction to try and decide the present suit?OPD.
5. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties?OPD.
6. Whether the plaintiff has not come to the court with clean hands?OPD.
7. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has proved his case, by leading sufficient and cogent evidence. Accordingly, suit for permanent injunction filed by the plaintiff, was decreed by the learned trial court, vide its impugned judgment and decree dated 29.2.2012. Feeling aggrieved, defendants filed their first appeal but the same also came to

be dismissed learned District Judge, vide his impugned judgment and decree dated 2.5.2015. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Parties to this unwarranted litigation are closely related with each other. Sita son of Parbhati-defendant No.2 was owner of the suit property. He had three sons. One of them was Satpal-plaintiff-respondent and others were Baljit and Rajbir. However, Rajbir is not one of the defendants-appellants herein. Case of the plaintiff-respondent was based on an oral family settlement and as a consequence thereof, suit property fell to his share. It has also gone undisputed on record that plaintiff financially contributed in raising construction over the suit property. Thus, construction raised over the suit property was from the common pool of the family.

It was further pleaded and proved case of the plaintiff that as a consequence of the oral family settlement, plaintiff was put in possession over the suit property and thereafter, he had been residing therein with his family. The stand taken by the plaintiff in his pleadings was duly corroborated by independent witnesses who were respectables of the village, including Ram Kumar, Ex. Sarpanch, as PW2, Ram Niwas son of Puran as PW3 and Ram Niwas son of Pale Ram as PW4. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction in passing their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and

cogent findings recorded by the learned first appellate court in para 22 to 24 of its impugned judgment, which deserve to be noticed here, read as under:-

“ While disposing of issue No.1, the Trial Court has held that though as per the jamabandi (Ex.P2), Sita Ram (Appellant No.2) is owner in possession of Bara,i.e.plot no.36/17/40 measuring 3 Marlas. Yet, the presumption is rebuttable one. Further, there could be a family settlement, even if the said property was self-acquired. The Trial Court has also held that in para No.3 of the written statement, Appellants have admitted that a pukhta house was constructed out of the common pool of the family and all the three brothers had contributed to the same. The Trial Court also held that Appellant No.1 has admitted that they would not interfere in the possession of the Respondent and this shows that Respondent is in possession of house constructed on Bara bearing Khewat No.36/17/40.

After appraising the evidence on the record, I am of the considered view that the BARA bearing Khewat No.36/17/40 measuring 3 Marlas was owned by Sita Ram. Appellants in para No.3 of the written statement, have admitted that a pukhta house was constructed on the same out of the common pool of the family and the three brothers including Respondent had contributed to the common pool of the family. The admission made by the Appellants in para No.3 of the written statement is categoric that all the family members had contributed for the construction of the house of the BARA bearing Khewat No.36/17/40 measuring 3 Marlas.

The next question which arises for the consideration is whether the Respondent has proved on the record that there was partition whereby northern half share of the property was given to the Respondent. Respondent has pleaded this fact in his plaint categorically. However,

Appellants have denied this fact. As per the Respondent, the family partition was oral. Respondent (PW1), in his testimony, has deposed that the oral family partition had taken place in the presence of Ram Kumar, Ex.Sarpanch (PW2), Ram Niwas S/o Puran (PW3) and Ram Niwas S/o Pale (PW4) and relatives. Ram Kumar (PW2), in his testimony, has also admitted this fact. He has also admitted that Ram Niwas S/o Puran (PW3) and Ram Niwas S/o Pale (PW4) were also present at the time of family partition. Ram Niwas (PW3), in his testimony, has deposed that there was an oral family partition. Ram Niwas (PW4) has also admitted that there was a family partition. I have carefully perused the testimonies of these witnesses. I am of the considered view that their testimonies are credible. The Trial Court has come to the right conclusion that there was an oral family partition whereby northern half portion of the house (BARA) had fallen to the share of the Respondent. Accordingly, I hereby affirm the findings of the Trial Court on this issue.”

A bare combined reading of both the impugned judgments would make it crystal clear that each and every relevant aspect of the matter was duly considered and rightly appreciated by the learned courts below before recording their concurrent findings of facts. Once plaintiff has duly proved the oral family settlement and as a consequence thereof his exclusive possession over the suit property was also proved, his suit was very much maintainable in the given fact situation and the same was rightly decreed by the learned courts below, therefore, both the impugned judgments and decrees deserve to be upheld.

On the contrary, defendants-appellants could not bring on record cogent and convincing evidence in support of their pleaded case. Neither they filed any counter-claim, nor they were able to extract anything adverse from

witnesses of the plaintiff during their cross-examination. Had the oral family settlement not been acted upon by the parties, the position might have been different. Once the oral family settlement and possession was duly pleaded and proved by the plaintiff by examining more than one abovesaid witnesses and defendants could not bring on record any contrary evidence, suit of the plaintiff was rightly decreed. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

So far as the judgment of the Hon'ble Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and others, 2008 (4) SCC 594**, relied upon by learned counsel for the appellants, is concerned, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgment, it has not been found to be of any help to the appellants, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the judgments rendered by both 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 a 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

7.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No