

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

RSA No.664 of 2015.

Date of Decision: 09.01.2017.

Kuldip Singh

....Appellant.

VERSUS

Sat Pal and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Satpreet Grewal Kapila, Advocate for the appellant.

SNEH PRASHAR, J.

This was Regular Second Appeal filed by appellant-plaintiff Kuldip Singh (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 11.08.2012 passed in Civil Suit No.144 of 26.05.2007 by learned Civil Judge (Junior Division), Pathankot, partly decreeing the suit for actual possession by way of partition instituted by the appellant against respondents-defendants Sat Pal and another (hereinafter referred to as the “respondents”), which was upheld by the first appellate Court vide judgment and decree dated 25.09.2014.

The facts garnered from the record are as under:-

Appellant Kuldip Singh filed a suit for actual possession by way of partition of land underneath and structure thereon to the extent of half share of area described as Khata No.22, Khatoni No.299, Killa No.77/13 measuring 2 Kanals, situated in village Dholowal HB No.154, Tehsil and District Pathankot, as per Jamabandi for the year 2002-2003

(hereinafter referred to as the “suit land”). He pleaded that the respondents are his real brothers. Apart from the suit land, they own residential house in village abadi constructed in about 17 Marlas of land. He and Sat Pal (respondent No.1) had jointly built the residential house in an area of one Kanal and the remaining one Kanal is Barani but being attached to the house is used as kitchen garden. Though the parties are recorded as owners to the extent of 1/3rd share each, but the fact is that as per mutual settlement, he (appellant) and Sat Pal (respondent No.1) had relinquished 1/3rd share each in the residential house in favour of Amar Nath (respondent No.2) making him exclusive owner of the same. In lieu thereof, Amar Nath (respondent No.2) had relinquished 1/3rd share in the suit land as a result of which he (appellant) and Sat Pal (respondent No.1) had become joint owners in possession of the suit land to the extent of half share each. As Sat Pal (respondent No.1) intended to oust him and grab valuable portion of the suit land, he filed a suit for injunction, which was decreed in his favour vide judgment and decree dated 26.10.2006.

Accordingly, by way of present suit, the appellant prayed for partition of the suit land by metes and bounds.

The respondents contested the suit raising objections with regard to maintainability of the suit, locus standi of the appellant to file the suit and concealment of true and material facts by him. They denied relinquishment of their respective shares in the house or the suit land as alleged by the appellant and submitted that the appellant has no right or concern with the residential house constructed in village Dholowal.

On the rival contentions of the parties, following issues were

- (1) Whether the plaintiff is entitled to possession by way of partition? OPP.
- (2) Whether the suit not maintainable in the present form? OPD.
- (3) Whether the plaintiff has got no locus standi to file the present suit? OPD.
- (4) Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts, if so its effect? OPD.
- (5) Whether the plaintiff has no cause of action to file the present suit? OPD.
- (6) Relief.

To substantiate his pleadings, the appellant himself stepped into the witness box as PW1 and proved Jamabandi for the year 2002-2003 (Ex.P1), judgment dated 26.10.2006 (Ex.P2) and decree sheet (Ex.P3). However, the respondents failed to lead any evidence and their evidence was closed by court order.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court partly decreed the suit to the extent that the appellant is entitled to separate possession by way of partition of his 1/3rd share in the suit land.

Appellant preferred an appeal against the judgment and decree dated 11.08.2012 passed by learned trial Court which was dismissed by learned District Judge, Pathankot vide judgment and decree dated 25.09.2014.

Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

The submissions made by Ms. Satpreet Grewal Kapila, learned counsel representing the appellant have been considered.

Learned counsel for the appellant contends that it is a settled proposition of law that there can be an oral family partition. In order to prove his plea that there had been an oral family settlement between the parties by virtue of which Amar Nath (respondent No.2) had become exclusive owner of the residential house situated in village Dholawal whereas the appellant and Sat Pal (respondent No.1) had become owner to the extent of half share each in the suit land, the appellant had appeared in the witness box and made a statement on oath. None of the respondents either stepped into the witness box or produced any evidence to rebut the statement of the appellant with regard to the family settlement. In the earlier suit also for permanent injunction filed by the appellant, the respondents did not deny existence of the family settlement by virtue of which respondent No.2 had relinquished his 1/3rd share in the suit land. Since the evidence of the appellant remained unchallenged and unimpeached, he is entitled to half share in the suit land and also to partition of the suit land accordingly and the judgment and decree passed by learned trial Court as well as first appellate Court deserves to be set aside.

Needless to say that the plaintiff has to stand on his own legs. In other words, he can succeed only on the strength of his own case and can take no benefit of any lacuna, defect or weakness in the case of the defendant. In the case in hand, it was specific plea of the appellant that he and Sat Pal (respondent No.1) were owners to the extent of half share each in the suit land on the basis of a family settlement. He also pleaded that in addition to the suit land, there was a jointly built residential house of the parties and by virtue of the family settlement he and Sat Pal (respondent

favour of their brother Amar Nath (respondent No.2). The onus to prove the family settlement, may be oral, as well as the terms and conditions of the family settlement was squarely on the appellant. Since the respondents denied that any such family settlement as pleaded by the appellant had taken place, the appellant was required to produce substantive and reliable evidence to prove the said family settlement and relinquishment of shares by the parties in each others favour in the joint properties as alleged by him. His solitary deposition with regard to the family settlement was incompetent and insufficient to prove the family settlement. He did not even produce any evidence to prove nature and identity of the properties which were joint between the parties as the respondents-defendants denied that he had any right or interest in the residential house.

As noticed by learned trial Court as well as by learned first appellate Court, the date, month or year of the family settlement was not pleaded or proved by the appellant. No independent witness or member of family of either of the parties was examined to prove the family settlement. On the contrary, as per the Jamabandi for the year 2002-2003 (Ex.P1) tendered in evidence, the appellant and the respondents, who are real brothers, are recorded to be co-sharers in joint possession of the suit land. Accordingly, they had 1/3rd share each in the suit land. There is no reflection of any family settlement qua the suit land in the revenue record and no evidence worth reliance could be produced by the appellant to rebut the entries recorded in the Jamabandi. Neither the factum of family settlement nor relinquishment of his 1/3rd share in the suit land by Amar Nath (respondent No.2) could be established by the appellant.

Thus, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

09.01.2017.
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes