

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

**RSA No.2445 of 2017 (O&M)  
Date of decision: 27.07.2017**

**Labh Chand (deceased) through LR**

**... Appellant**

**Vs.**

**Inderjit Singh and others**

**... Respondents**

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

Present: Mr. Ravi Kant Sharma, Advocate  
for the appellant.

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**RAMESHWAR SINGH MALIK, J. (ORAL)**

Feeling aggrieved against the preliminary decree dated 06.09.2001 passed by the learned trial Court, which was upheld by the learned first appellate Court vide its impugned judgment and decree dated 03.02.2016, in a suit for separation of possession by means of partition of the joint property by metes and bounds, defendant No.1 through his legal representatives, has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that the common ancestor of the parties namely Govind Ram was owner of the suit property, described in head note of the plaint and depicted in attached site plan with red colour. Govind Ram died and suit property devolved upon his three sons namely Gian Chand, Jagiri Ram and

Rehlu Ram. The two sons of Govind Ram died issueless and his third son namely Jagiri Ram became exclusive owner of the suit property. After death of Jagiri Ram, the suit property was devolved upon his five legal heirs with 1/5th share each. Plaintiff No.1 and defendant No.1 inherited 1/5th share each in the suit property. Defendant No.13 also became owner to the extent of 1/5th share in suit property. Another 1/5th share devolved upon plaintiff No.5 and defendants No.2 to 6 being legal heirs of Kishori Lal. Plaintiffs No.2, 4 and 5 and defendants No.7 to 12 inherited 1/5th share in suit property being legal heirs of Durga Dass. The suit had been filed for separation of 3/5th share of suit property by partition belonging to plaintiff No.1 and legal heirs of Kishori Lal and Durga Dass, defendants No.2 to 12. It was averred that defendants No.2 to 12 had similar interest as that of plaintiffs. These defendants No.1 to 12 can join plaintiffs any time or they can get their share separately. It was further averred that the suit property was joint among the parties to suit and it had not been partitioned so far. There had always been dispute between the parties as the suit property was joint. The plaintiffs intended to get the suit property partitioned. The plaintiffs were in actual and physical possession of a room, shown as mark 'X' in site plan. Rest of the portion was in possession of the defendants. It was alleged that defendant No.1 was influential person and he was removing girders and bricks from first floor of the suit property. Defendant No.1 had threatened to demolish the suit property and to dispossess the plaintiffs therefrom. The plaintiffs would suffer irreparable loss, if defendant No.1 succeeds in doing so. Defendants No.1 to 13 had been repeatedly asked to admit the claim of plaintiffs and other defendants, but they paid no heed to the request and they finally refused to admit the same one month prior to filing of suit. Hence it was

prayed that a decree for separate possession by partition of suit property to the extent of 3/5th share of the plaintiffs and defendants No.2 to 12 be passed in favour of the plaintiffs along with costs. It was also averred that if the property in dispute could not be partitioned, it be put to sale.

Defendants were put to notice. Defendants No.2 to 13 admitted the claim of the plaintiffs in toto and they joined hands with the plaintiffs, praying for passing a decree, as prayed for by the plaintiffs. It was only defendant No.1-appellant who contested the suit by filing his contesting written statement, taking more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the property in suit is still joint of the parties in suit? OPP.
2. Whether the suit property was partitioned between the parties by way of family settlement, if so its effect? OPD.
3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPP
5. Whether the plaintiff is barred by his act and conduct to file the present suit? OPD.
6. Whether the suit is bad for non joinder of necessary parties? OPD.
7. Whether the suit is bad for partial partition? OPD.
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.

9. Relief.

In support of their pleaded case, plaintiffs brought on record their documentary as well as oral evidence. Defendant No.1-appellant did not lead any evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court passed the preliminary decree for partition of the suit property amongst the parties to the suit, in accordance with their respective shares. Defendant No.1 challenged the impugned judgment and decree dated 06.09.2001 passed by the learned trial Court by way of first appeal, which also came to be dismissed by learned first appellate Court, vide its impugned judgment and decree dated 03.02.2016. Hence this regular second appeal at the hands of unsuccessful defendant No.1, through his legal representatives.

Heard learned counsel for the appellant.

It was the own pleaded case of defendant No.1-appellant that the suit property was partitioned by the parties many years ago by way of an oral family settlement. As per the pleaded case of the appellant, portion shown in red colour came to his share, whereas portion shown in blue colour was given to the plaintiffs and other co-sharers. These material facts would go a long way to show that the appellant never denied the share of the plaintiffs in the suit property. This seems to be the reason that defendants No.2 to 13 did not contest the suit.

Since the partition could not take place by metes and bounds and inter-se dispute was still going on amongst the co-sharers, plaintiffs were justified in filing the suit for separation of possession by way of partition. These facts were rightly appreciated by both the learned Courts below, before passing

their respective impugned judgments and decrees. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within the jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is pertinent to note here that in compliance of the impugned judgment and decree passed by the learned trial Court, even a final decree has also been already passed on 29.11.2013, which is available at pages 26-27 of the paper book. It is also not the argued case on behalf of the appellant-defendant No.1 that he was not given his due share i.e. 1/5th share in the suit property. Once it is so, no fault can be found with either of the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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

1. ***Uma Shashi Devi (D) through LRs Vs. Dibakar Banerjeet and others, 2012 AIR (SC) 3153.***
2. ***Bhupinder Singh and others Vs. Roop Singh and another, 2010 (8) RCR (Civil) 788.***
3. ***Inder Sain and another Vs. Tika Ram (since deceased) through LRs and others, 2010 (65) RCR (Civil) 480.***
4. ***Mohinder Singh and another Vs. Devi Lal and others, 2012 (26) RCR (Civil) 200.***
5. ***Lal Chand Vs. Govind Lal @ Gobind Ram and others, decided on 20.03.2017 in RSA No.2952 of 2015.***

Before arriving at a judicious conclusion, the learned first appellate Court rightly examined, considered and appreciated true facts of the case as

well as evidence brought on record, in the correct perspective. The relevant and cogent findings recorded by learned Additional District Judge in para 8 of the impugned judgment, which deserve to be noticed here, read as under: -

*“Perused the record which shows that the respondent filed reply to the application for final decree that the applicant is not co-sharer in the property in dispute nor he is in possession as alleged by him, and that the property in dispute was partitioned many years ago by all the co-sharers and since the day of said partitioned, all the co-sharers are in their separate and specific possession. In the preliminary decree dated 06.09.2001 the said court of Civil Judge (Jr. Divn.) has clearly defined the share of the parties and in that civil suit the plea raised by the respondent No. 1 was that the suit property was already partitioned by way of oral family settlement. Therefore, that aspect has already been considered by the court of Civil Judge (Jr. Divn.) vide order dated 06.09.2001 and in the impugned order dated 29.11.2013, it has been rightly observed that the said controversy in this regard has already been set at rest by the court while passing preliminary decree on 06.09.2001. Therefore, argument advanced by learned counsel for the appellant is not tenable.”*

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded 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 the 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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. The present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[ RAMESHWAR SINGH MALIK ]  
JUDGE

27.07.2017  
*vishnu*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |