

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

**RSA No.2646 of 2017 (O&M)
Date of decision: 23.08.2017**

Dhan Singh, since deceased, through his LRs.

.....Appellants

Versus

Sukhdev Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Khurana, Advocate,
for the appellant(s).

Ritu Bahri, J.

This appeal has been filed against the judgment dated 23.02.2017 passed by the District Judge, Yamuna Nagar at Jagadhri, dismissing an appeal filed by defendant, through legal heirs-appellants against the judgment and decree dated 09.05.2013 passed by the Civil Judge (Senior Division), Yamuna Nagat at Jagadhri, whereby preliminary decree for separate possession by way of partition of the suit property to the extent of ½ share has been passed in favour of plaintiff-respondent No.1.

Sukhdev Singh.-plaintiff (respondent No.1 herein) filed a suit for separate possession by way of partition by metes and bounds to the extent of his share in the suit property, as detailed in the head note of the plaint, with consequential relief of permanent injunction restraining the defendants (appellant and respondent No.2 to 4) from alienating specific and valuable

portion of the joint property, including the share of the plaintiff and from changing its existing position by raising any further construction. It was stated that plaintiff-respondent No.1 along with Sant Singh (father of defendants) had jointly purchased the suit property in equal shares. Later on, Sant Singh died and his share in the suit property was inherited by defendants. Therefore, they became co-sharers in the suit property along with the plaintiff to the extent of $\frac{1}{2}$ share. The suit property had not been partitioned by metes and bounds and it continued to be joint. When plaintiff requested the defendants to get the property partitioned by metes and bounds, they put off the matter on one pretext or the other and finally, refused to do so. They had also threatened to raise construction in the suit property and to change its existing nature, to which, they had no right. Hence, the suit.

Upon notice, defendant Nos. 1, 2 and 4 filed joint written statement stating therein that defendant No.1 was owner of plot measuring 200 square yards, situated adjacent to the house of plaintiff in village Ratauli. The plot in dispute was situated outside the *abadi* of village Rtauli. As per mutual settlement, aforesaid plot of defendant No.1 was given to the plaintiff during the lifetime of his father Sant Singh. On the basis of mutual settlement and oral exchange, which took place in May, 1970, the plaintiff had given his share in the property in dispute the defendant No.1 and had taken the property of defendant No.1, situated in old *abadi* adjacent to the house of plaintiff. After the exchange, defendant No.1 had constructed a cattle shed and a room for storing agricultural equipments and subsequently, in 1996, he had raised construction of a residential house spending Rs.10,00,000/- without any objection from the plaintiff. Hence, the plaintiff

was estopped from filing of the suit. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement was filed controverting the allegations made in the written statement and reiterating those of the plaint.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled for separate possession of the property by way of partition by metes and bounds? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether plaintiff has not come to the Court with clean hands and concealed the true and material facts from Court? OPD
4. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether suit of the plaintiff is not maintainable in the present form? OPD
6. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
7. Whether the suit of the plaintiff is hopelessly time barred? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit in the above terms. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts have given concurrent finding of fact that as per the sale deed dated 03.10.1960 Ex.P2, plaintiff and Sant Singh (father of defendants) had purchased the suit property jointly to the extent of ½ share each. The defendants had raised construction of residential house over the suit property and the plaintiff had never objected to the said construction.

Although, defendant No.1 had spent more than Rs.10,00,000/- on the said

construction, yet the plaintiff (respondent No.1 herein) had a right to the extent of $\frac{1}{2}$ share over the suit property. It has been further held that defendant No.1 was entitled for the costs of construction from the plaintiff, which would be assessed at the time of final decree.

The plaintiff (respondent No.1) has duly proved execution of the sale deed dated 03.01.1960 Ex.P2. The plea raised by defendant No.1-appellant that he had exchanged a plot measuring 200 square yards, situated adjacent to the house of plaintiff, in mutual settlement during the lifetime of his father, has been rejected on the ground that no evidence was led to prove the aforesaid exchange deed, except oral statement of Dhan Singh (DW-1). Even the particulars of the exchanged property has not been given. Hence, it was rightly held that no valid exchange of the immovable property was made out.

After going through the impugned judgments, it is apparent that plaintiff (respondent No.1) had jointly purchased the suit property with father of the defendants to the extent of $\frac{1}{2}$ share each. Hence, he is entitled to get partitioned of the suit property by metes and bounds. The defendants have failed to prove, by leading cogent and convincing evidence, that a plot measuring 200 square yards, owned by defendant No.1, had been given to the plaintiff in lieu of his share in the suit property. In the absence of any evidence with regard to the exchange deed, the suit of the plaintiff has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

23.08.2017
ajp

(RITU BAHRI)
JUDGE

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