

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.M. No.13183-C of 2017 in/and
RSA No.3098 of 2017(O&M)
Date of Decision: 02.11.2017**

Sethi Ram & ors.

... Appellants

Versus

Barkha Ram

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Aayush Gupta, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.(Oral)

C.M. No.13183-C of 2017

The application for advancement of date is allowed for the reasons stated therein, which is duly supported by an affidavit.

The main appeal is ordered to be heard today itself for disposal.

RSA No.3098 of 2017(O&M)

There is no merit in this appeal, The learned Additional District Judge-I, Panchkula, in his judgment dated January 13, 2017, has thrashed out the entire controversy in paragraphs 14 and 15 of the judgment in a befitting manner preserving the right of the plaintiff to a declaration of his share in the suit property howsoever small it may be or inconvenient to the stakeholders to divide by partition, which reasons are reproduced below as they sum up the case first hand on the evidence adduced by the parties who are no strangers but brothers, several against one whose career carried him away from the village where the built up property in dispute is situated within the lal dora:-

“14. The next question arises whether the suit property was self-acquired property of the father of the appellant?

The learned counsel for the appellant during the course of arguments warranted the attention of this Court towards the admission of Krishan Chand DW3 in his cross-examination, according to which, prior to the death of Faggu Ram, father of the appellant, the appellant and his brother late Sat Parkash were residing with him. The testimony of this witness DW3 is not believable at all. In the course of his evidence he tendered sworn affidavit Ex.DW3/A and para no.1 of the said affidavit is very much relevant, which in itself speaks how much veracity is there in the version contained in affidavit Ex.DW/3A. In para No.3 of the affidavit Ex.DW3/A he deposed that he is one of the defendants(respondents), whereas it is a matter of record he is not one of the defendants, because, the name of father of the defendants (respodnents) is Sat Parkash, whereas the father name of this witness is Hari Ram. Once a witness in the course of evidence can give affidavit without knowing the contents of the same , then, how, can said witness be believed qua his version. However, admission of DW2, according to which, he admitted except the property in dispute there is no another property at village Hangoli and after the death of his grandfather i.e. father of the appellant, his father and the appellant became joint owners in the same. It is correct the appellant has been failed to prove the ancestral nature of the suit property, as already discussed herein before, but the admission of Dharamveer DW2 in his cross-examination makes clear, except the property in dispute, the parties are not having any another property at Village Hangoli. DW2 in his cross-examination admitted after the death of his grandfather i.e. father of the appellant and father of his father, appellant and his father became co-sharers in the suit property. He in his cross-examination admitted there is no sale deed showing that his father ever purchased any another property at Village Hangoli. In his cross-examination at page no.8 DW2 admitted his grandmother expired in the year 1985 and the appellant and his father were brought up by his grandmother. He also admitted the appellant had three sons namely Giani @ Gian Chand, Subhash and Meena. He admitted Gian Chand had

studied up to 10th standard in a Government School at Village Hangoli in the year 1981-82. He also admitted appellant's another son also passed out 5th standard examination in the year 1979-80 from a school situated at village Hangoli in the year 1982-83 and another sons of the appellant on attaining the age of 16 years expired at Village Hangoli. In his further cross-examination at page no.4 he also admitted the appellant was born at village Hangoli and thereafter, he shifted to village Chakchanpur.

15. Although, as already observed, the appellant has been failed to establish the ancestral nature of the suit property, but it is not the case of the respondents that the suit property is their self-acquired property. It is also not in their case that their father late Sat Parkash in his lifetime had purchased any property in the abadi deh of village Hangoli by way of registered sale deed. DW2 admitted after the death of his father, grandfather i.e. father of the appellant and father of late Sat Parkash, the appellant and father of the respondent became co-sharers qua the suit property at village Hangoli. It is not the case of the respondent that their grandfather executed any Will or gift deed in favour of their father or in favour of them. It means Faggu Ram, father of the appellant and late Sat Parkash died intestate and his widow has already died in the year 1985. There is nothing on record that late Faggu Ram, except the appellant and his brother late Sat Parkash, had left behind any another son or daughter as his legal heirs. Then taking into account admission of Dharamveer DW2, one of the respondents, it is clear after the death of father of the appellant, whatsoever property late Faggu Ram was having at village Hangoli, the same was inherited by the appellant and his brother, late Sat Parkash and their mother, who expired in the year 1985 and after her death, the appellant and his brother Sat Parkash became owners to the extent of $\frac{1}{2}$ share each in the property situated within the abadi deh of village Hangoli. After the death of father of the respondents, the appellant became owner to the extent of $\frac{1}{2}$ share and the respondents became owner in the remaining $\frac{1}{2}$ share, in equal shares each. The respondents questioned

the genuineness and authenticity of site plans Ex.P1 to Ex. P3 relied upon by the appellant being incorrect not showing the factual position of the suit property, but after the death of his father he became co-sharer in suit property to the extent of $\frac{1}{2}$ share. It is well settled law a co-sharer is deemed to be in possession of every nook and corner of the joint property. Physical possession of the suit property by the co-sharer to it, is not necessary. The plea like adverse possession cannot be applied in between/amongst the co-sharers. Even if the appellant is not residing in the suit property in any capacity for the last so many years, but he is entitled to his share in it. The learned trial Court has not appreciated the evidence on record in legal and judicious manners. The law cited by the learned counsel for the respondents and also relied upon by the learned trial Court also in "Hawa singh vs. Daya Nand and others", 2011 (1) LJR 270 is not applicable to the facts and circumstances of the case in hand, because, despite the failure on the part of the appellants to prove the ancestral nature of the suit property, it is proved self-acquired property in the hands of the parties being inherited from common ancestor late Faggu Ram and the appellant is entitled to separate possession of the suit property to the extent of $\frac{1}{2}$ share on one hand and the respondents no.1 to 6 qua the remaining $\frac{1}{2}$ share in equal shares each on the another hand, as per their own site plans Ex.DW1/A to Ex. DW1/D as they themselves asserted the correctness of these site plans. The findings recorded by the learned trial Court are illegal and perverse, being contrary to the admitted factual position and are liable to be set aside."

The plaintiff is the brother of the father of the defendants. Both the brothers from whom rights are claimed have half share in the property in the partition proceedings leading to a preliminary decree apportioning shares in the suit property situated within the Lal Lakir of Village Hangoli, District Panchkula.

The star argument raised by the appellants is that the plaintiff did

not live in the village while pursuing his career elsewhere and therefore, lost his rights to possession and ownership over any part of the property.

The learned Additional District Judge held that even if the appellants are not residing in the suit property in any capacity from the last many years, they are still entitled to share in it which comes from natural succession by inheritance. After the death of the father of the defendants, the plaintiff became owner to the extent of half share of suit property and the defendants to the remaining half in equal shares. As co-sharers injunction would not issue against one or the other since they are deemed to be in possession of every inch of the land falling in joint property. It has been correctly observed by the learned Additional District Judge that physical possession of the property of the co-sharer is not necessary to establish right to seek partition. It will be of no consequence whether the property was ancestral in nature. If that finding was against the plaintiff even then the property was in the nature of self-acquired when inherited from ancestor and therefore, the plaintiff son of Faggu Ram is entitled to share in it. As a result, share of defendants No.1 to 6 (appellants herein) is determined as half of the suit property as per site plans Ex.DW-1/A to Ex.DW-1/D. The site plans were not disputed by the parties. For the reasons elaborately explained in paragraph 14 and 15, which I wholly endorse as the only possible view on the evidence, the judgment and decree of the trial Court has been rightly reversed in first appeal since the trial court's findings were based on a misreading of the pleadings and the evidence produced by the parties and for lack of knowledge of the law governing the subject matter of rights in property and how they flow in joint property of co-sharers and the laws of inheritance

among the Hindus.

I have absolutely no reason to interfere with the findings of facts recorded by the learned Additional District Judge in conformity with pleadings and the relevant evidence. The appeal is devoid of merit and consequently the same is ordered to be dismissed.

As a result, the application for stay of execution proceedings pending for 8.11.2017 in the court below is also dismissed along with the appeal.

02.11.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>