

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

RSA No.6044 of 2014 (O&M).
Decided on:-February 08, 2017.

Deep Chand and another

.....Appellants.

Versus

Omi alias Om Parkash and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rakesh Dhiman, Advocate
for the appellants.

Mr. Sanjay Viz, Advocate
For the respondents No.1 to 3.

Mr. Paramjeet Singh, AAG, Haryana assisted by
Mr. Dharam Pal, Town Planner.

HARI PAL VERMA, J.

Appellants-plaintiffs have filed the present regular second appeal against the judgment and decree dated 14.08.2014 passed by learned Additional District Judge, Gurgaon whereby their appeal against the judgment and decree dated 31.01.2014 passed by learned Civil Judge (Junior Division), Gurgaon, was dismissed.

Briefly stated, the appellants-plaintiffs filed a suit for possession by way of partition with consequential relief of permanent injunction. As per the plaint, the plaintiffs and defendants are real brothers. They are legal heirs of Chiranji son of Bihari. The father of the plaintiffs and defendants was

owner of a plot measuring 100 sq. yards comprising in rectangle No.32, Killa No.24/6 situated within the revenue estate of village Kanhai, Tehsil and District Gurgaon vide gift deed bearing Vasika No.127 dated 27.06.1979. The father of plaintiffs and defendants had expired on 03.02.1992. After his death, there remained a dispute between co-owners and the plaintiffs regarding possession of the suit property. The appellants are not utilizing the maximum benefit of their share, whereas the respondents-defendants are trying to alienate the plot in question and also trying to raise construction over the plot. Therefore, a decree for partition of the plot in question by metes and bounds separating share of the parties has been prayed for.

Though notice in the suit was issued to the defendants, but they did not appear before the trial Court, hence were proceeded against *ex parte*.

Learned trial Court had dismissed the suit vide judgment and decree dated 31.01.2014 as the appellants-plaintiffs failed to prove that they along with defendants are the only legal heirs of Chiranji Lal. The plaintiffs did not examine any witness except themselves who could depose that the plaintiffs and defendants are the only legal heirs of Chiranji Lal. Even the gift deed dated 27.06.1979 (Ex.P2) showing ownership of Chiranji Lal over the suit land was not produced in original. The gift deed has not been proved by bringing on record any relevant witness.

Aggrieved against the judgment and decree dated 31.01.2014 passed by the trial Court, the appellants-plaintiffs filed an appeal before the lower appellate Court, but the same was also dismissed by learned Additional District Judge, Gurgaon vide judgment and decree dated

14.08.2014 on three counts, which read as under:

“(A) Firstly, as rightly observed by learned trial court, the original Gift Deed by virtue of which 100 sq. yards plot was gifted to Sh.Chiranji on dated 27.6.1979, has not been placed on record by plaintiffs, to prove that the property in question is still continuing with Chiranji Lal. The certified copy of Gift Deed cannot be equated with a certified sale deed as the latter is per se admissible under the provisions of Section 74(2) of Indian Evidence Act and Section 77 of Indian Evidence Act, but the same is not the position in respect of the certificate of Vasika No.127/27.6.1979, certified by Sub Registrar, Gurgaon, having a copy of certificate of gift attached therewith. Since, it is a case where as per the plaintiffs, the plot in question was gifted by Gram Panchayat to Chiranji son of Sh. Bihari, under the provisions of schedule 13(A) of Punjab Village Common Lands (Regulation) Act, 1961, it was required to be proved by the plaintiffs that such document i.e. the certificate, was issued by Gram Panchayat in favour of Chiranji and the said Gift Deed was not withdrawn by the Gram Panchayat for any of the violation of its terms by donee, but the same has not been done by the plaintiffs. Accordingly, the suit of the plaintiffs has rightly been dismissed on this count.

(B) Secondly, the suit of the plaintiffs has rightly been dismissed by learned trial court as the plaintiffs did not implead all the L.Rs of the deceased Chiranji, who could have had their equal share in the plot in question, if its allotment otherwise stood proved till he expired. Not only this, the perusal of certificate of allotment, though not proved, indicates that the plot in question has dominus over it of the doner i.e. Gram Panchayat. It is specifically mentioned in this certificate that whenever there is violation of any of terms mentioned therein by the donee or his L.Rs after his death, the Gram Panchayat

could resume the plot in question. In that eventuality, it was necessary for the plaintiffs to have joined the Gram Panchayat as a necessary party to contest the issue of partition of plot and also to prove that the plot has not been resumed or that it could be partitioned as prayed for. On this count also, the suit has rightly been dismissed.

(C) This suit further deserves to be dismissed on the ground that even if it is accepted that Chiranji Lal was allotted the plot in question and had retained its possession till he died and that his L.Rs would step into his shoes after his death, then in that case also, suit of partition on this piece of land cannot be allowed as execution of the relief as prayed would be impossible. In the case in hand, the plot is of 100 sq. yards which has now almost 8 claimants being L.Rs of the deceased and certainly it cannot be divided in 8 pieces and one notional of deceased further dividable among L.Rs as this division would destroy the utility of the plot in question. Another option is to put the plot on sale so that its sale proceeds are divided among the L.Rs to settle the question of its partition amicably but the same is not possible because of the bar on sale or bar on the transfer of title, provided in the terms of allotment or in schedule 13-A of the Act. The perusal of contents of Ex.P2, though not legally proved, indicate that donee or his L.Rs have been barred from selling the plot in question or to give it away in gift or to mortgage it or to transfer its title. With these conditions, even the mode of partition of this plot cannot legally be given effect of through sale because if procedure of partition is adopted, this would amount to violation of terms and conditions of the allotment giving right to the Gram Panchayat to resume it. This is also the ground to dismiss the suit.”

Thus, the judgment and decree passed by learned trial Court was affirmed by the lower appellate Court.

Still aggrieved, the appellants-plaintiffs have filed the present regular second appeal.

The appellants-plaintiffs have formulated the following substantial questions of law:

- (i) As to whether a suit could be dismissed on the ground of non-joinder or mis-joinder of parties in view of the provision mentioned under Order I Rule 10(2) CPC?
- (ii) As to whether the Ld. Courts below could deviate and go beyond the case pleaded by the plaintiffs-appellants?
- (iii) As to whether a certified copy of a gift deed which is duly registered, could be refused to acted upon for deciding the present suit?
- (iv) As to whether adverse inference could have been taken against the defendants-respondents for not coming forward to contest the suit and permit themselves to be proceeded against ex-parte?
- (v) As to whether the impugned judgments and decrees are perverse and are liable to be set aside?
- (vi) Whether the order dismissing the application for additional evidence as well for impleading the other co-sharer moved by the appellant is justified in the facts and circumstances of the present case?
- (vii) Whether there is a grave misreading of the evidence and pleadings by the ld. Courts?

Learned counsel for the appellants-plaintiffs has argued that the appellants-plaintiffs being the legal heirs of their father Chiranji Lal are entitled to maintain the suit seeking partition of the plot in question. The appellants are being deprived from taking the maximum benefit of their respective share, whereas the defendant is trying to alienate the suit property and also tried to raise construction in the share of the appellants without there being any right, title and interest. They have put the building material over the plot in question without getting the plot partitioned by metes and

bounds despite the fact that the appellants-plaintiffs have a share in the said suit property. The suit has been dismissed on mere technicality despite the fact that the Court has been vested with ample power to effectively deal with a suit in order to decide the rights of the parties effectively and completely once for all. The suit was not liable to be dismissed on account of mis-joinder and non-joinder of the necessary parties. In case addition of necessary parties was required to be made, the Court is empowered to add the necessary parties at any stage in order to give effective and complete adjudication. The Courts below were not justified in dismissing the suit for the reason that the appellant-plaintiff had not produced the copy of gift deed Ex.P2 bearing Vasika No.127 dated 27.06.1979 though certified copy of the said document was produced.

On the other hand, learned counsel for the respondents-defendants has argued that the appellants-plaintiffs, namely, Deep Chand and Bhim Singh and respondents No.2 and 3, namely, Charan Singh and Jaina alias Jay Narayan have already availed the benefit of allotment of 100 sq. yards plot by the Gram Panchayat under the scheme formulated by the State Government. It is only respondent No.1 Omi alias Om Parkash who was not allotted such plot by the Gram Panchayat under the State policy. Therefore, he is entitled to continue with the possession of the plot in dispute left over by his father. He has further argued that the respondent No.1-defendant Omi alias Om Parkash had never enjoyed the benefit of allotment of 100 sq. yards plot under the scheme/policy framed by the State Government, which has been enjoyed by the other sons of Chiranji Lal. He has further contended that considering the nature of the property which is

only 100 sq. yards plot in which the respective share of each shareholder comes to about 12 sq. yards, it is not practically possible to partition the plot in question. However, the respondent No.1-defendant Omi alias Om Parkash is ready to pay the proportionate price of plot which comes to the share of appellants-plaintiffs.

I have heard learned counsel for the parties and perused the record.

There is no dispute that the appellants-plaintiffs have filed the suit for possession by way of partition without impleading all the legal heirs of Chiranji Lal from whom they are claiming share in the plot in dispute. Once the plaintiffs have sought relief of partition, but have not impleaded the other co-sharers, such suit is not maintainable. Even otherwise, the plot in question has been gifted by the Gram Panchayat to their father Chiranji Lal on 27.06.1979, though no such gift deed has been placed on record. Therefore, certified copy of gift deed cannot be equated with the certified copy of sale deed. Even otherwise, it being a plot of 100 sq. yards, the suit for partition for such small piece of land is not practically possible as the relief claimed in the suit would be impossible. The size of the plot is 100 sq. yards wherein almost 8-9 claimants are claiming their share being legal heirs of Chiranji Lal. This size of plot cannot be divided into 8-9 pieces as this division would destroy the very utility of the plot in question.

Learned appellate Court though has suggested a very viable mode of partition i.e. to put the plot on sale so that the sale proceeds can be divided among the legal heirs of Chiranji Lal to settle the question of its partition amicably. But even that sale is not possible because there is a

specific bar on the sale or transfer of title in the allotment letter, as these plots were allotted to the landless persons by the Gram Panchayat for housing purposes.

Be that as it may, since the appellants-plaintiffs have not impleaded the necessary parties and have filed the suit for possession by way of partition without impleading the other legal heirs of Chiranji Lal, this Court finds that there is no illegality in the judgments and decrees passed by the Courts below. It being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

February 08, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No