

RSA No. 6169 of 2014 (O&M)

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

RSA No. 6169 of 2014 (O&M)

Date of Decision: 21.8.2017

Brij Bala

.....Appellant

Vs.

Savitri Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. V.K. Shukla, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for separate possession by way of partition of the suit property filed by the plaintiffs was decreed by the learned trial court vide its impugned judgment and decree dated 3.2.2012 and first appeal of defendant No.1 was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 14.8.2014.

Brief facts of the case, as recorded by the learned trial court in para 2 of the impugned judgment, are that the properties shown as red in the site plans attached with the plaint marked A, B, C and D, fully detailed in the head note of the plaint, were previously the ownership of late Jangli Dass who was the father of plaintiffs No.2 to 4 and defendants and was husband

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of plaintiff No.1. Sh. Jangli Dass had since been expired in the year 1991 and the parties to the suit were the only legal heirs of the deceased Jangli Dass and after his death, plaintiffs and defendants inherited the suit properties. The properties shown as red in the site plans and marked as A, B,C and D were undivided properties inherited by the parties to the suit from Sh. Jangli Dass deceased according to the shares mentioned above and always there remained quarrel between the parties and they could not get enjoyment of their respective shares from the properties in dispute being the joint properties. To settle the dispute and quarrel of the parties, it was essential that the joint properties which were in abadi deh of village Sidhwan Bet were required to be partitioned as well as for the proper enjoyment and use of the same by the plaintiffs and defendants after the partition of the same and by delivery of respective shares and separate possession. The plaintiffs asked many a times to the defendants to get partitioned the suit properties, but the defendants always refused to do so on one pretext or the other. The defendants were threatening to alienate the joint suit properties to some one else just to cause wrongful loss to the plaintiffs. The threat of the defendants was unwarranted by law, if the defendant succeeded in their evil designs then the plaintiff would suffer an irreparable loss and injuries. The cause of action arose to the plaintiffs against a few days back when they flatly refused to accede to the just demand of the plaintiffs.

Defendants were put to notice. Defendant No.2 did not appear before the learned trial court and she was proceeded against ex parte by the learned trial court vide order dated 14.10.2005. However, defendant No. 1 appeared and filed her contesting written statement, raising more than one preliminary objections. Defendant No.1 also tried to base her case on an oral

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family settlement, which allegedly took place in the year 1989. Plaintiffs filed their replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is entitled to separate possession by way of partition to the extent of 4/6 share out of the suit property fully detailed and described in the head note of the plaint?OPP
2. Whether plaintiffs as well as defendants are co-sharers and joint holders of the suit property?OPP
3. Whether suit is not maintainable?OPD
4. Whether the suit property has been partitioned by way of oral family settlement?OPD
5. Relief

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have duly proved their case, by leading cogent and convincing evidence. Their share in the suit property was not disputed. Accordingly, suit of the plaintiffs for separate possession by way of partition was decreed by the learned trial court vide its impugned judgment and decree dated 3.2.2012. Feeling aggrieved, defendant No.1 filed her first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 14.8.2014. Hence this regular second appeal at the hands of unsuccessful defendant No.1.

Heard learned counsel for the appellant.

It is a matter of record that the entire case of the appellant was based on an alleged oral family settlement. However, she miserably failed to

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prove her pleaded case, by bringing on record relevant and cogent evidence. It is also not in dispute that alleged family settlement was neither acted upon between the parties, nor it was so recognised in the relevant revenue record. Unless such an oral settlement was acted upon between the parties or incorporated in the relevant revenue record, it would hardly be of any consequence. In such a situation, defendant No.1-appellant was bound to fail. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned trial court as well as learned first appellate court were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Further, share of plaintiffs-respondents in the suit property had never been in dispute at any point of time. Minus the alleged oral family settlement, defendant No.1-appellant had no legs to stand. She could not bring on record relevant and cogent evidence, so as to prove the alleged oral family settlement. Neither even the mother nor other sisters of the appellant supported her cause. Appellant herself was also unable to prove her pleaded case. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 22 to 31 of its impugned judgment, which deserve to be noticed here,

read as under:-

“So far as the character of the suit property is concerned, the same is admitted to be the original ownership of Sh. Jangli Dass, who died leaving behind plaintiffs and defendants as his Class I legal heirs. Plaintiff/ respondent no.1 is the widow of Sh. Jangli Dass whereas the remaining parties are the two sons and two daughters of Sh. Jangli Dass. Appellant admits that property in dispute was originally owned by Sh. Jangli Dass. However, she asserts an oral Family Settlement of 30.3.1989 whereby property described as ABC in the head note of the plaint is alleged to have been given to her by her father Jangli Dass.

Appellant-defendant has also put forth the plea that Sh. Jangli Dass had given the properties situated within the lal lakeer of Village Kat and properties mentioned in Head Note of the plaint to all other family members i.e plaintiffs and defendant no.2. However, there has been no detail of the nature of properties which were allocated to the other cosharers. A very vague assertion that property situated within lal lakeer of Village Kat was given to the other co-sharers has been put forth without elaborating the details and nature of the said alleged property.

The matter does not end here. Iqbal Singh, Nambardar, who has been examined to depose about the oral Family Settlement is not even aware about year of death of Sh. Jangli Dass, though he claims to have been meeting Jangli Dass daily during the life time of Jangli Dass. The said Iqbal Singh is not even aware of the fact as to when Jangli Dass shifted to Nakodar prior to his death. The witness is not even aware of the details of properties of Sh. Jangli Dass situated in Village Kat. He also admits that Savitri Devi, mother of appellant has filed a criminal case against the appellant. The witness is also unable to give the name of any other inhabitant of the Village in whose presence the alleged oral Family Settlement was

effected.

The testimony of Giani Gurcharan Singh, who is alleged to be the vendee of respondent nos. 3 and 4, qua the property alleged to have been allocated to these defendants is also of similar nature. This witness states that he never saw any document regarding the ownership of Yashpal etc. No sale deed of the property, which is the subject matter of Ex.D52 has been got executed by him so far. The perusal of the agreement to sell Ex.D52 and the extract of register of Deed Writer in which said agreement was entered reveals that the transaction was made by one Ved Parkash of Delhi and that no other person had any concern with the ownership of the property which was subject matter of the said agreement.

Thus a careful consideration of the matter reveals that though the appellant has admitted the entire property to be the ownership of Sh. Jangli Dass, she has failed to establish the factum of oral Family Settlement by leading cogent and convincing evidence.

It needs to be reiterated here that civil matters are decided on the pre-ponderance of probabilities. In the instant case from the fact that the mother of appellant i.e widow of Jangli Dass has come up with a claim against her own daughter and no other co-sharer has admitted the factum of Family Settlement, it may be safely inferred that the plea of oral Family Settlement is a plea being put forth by the appellant only to usurp the property left behind by her father.

Another very relevant aspect in the present case is that Appellant herself in her cross examination has admitted that she is in possession of the property in dispute as co-sharer.

The learned trial Court has appreciated the evidence in the proper perspective and has rightly arrived at the conclusion that the mere fact that the property in dispute is in possession of the appellant would not amount to ouster of the other co-sharers, more particularly, when appellant herself admits that

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she is in possession as a co-sharer and that earlier she was residing in Karnal and shifted to the property in dispute only in the year 2006, prior to which Sh. Jangli Dass along with his wife i.e mother of appellant was residing in the property in dispute. The mere fact that the electricity bills and telephone bills are being paid by the appellant, can not lead to the inference of ouster of respondents from the suit property, more particularly, when the very factum of oral Family Settlement is not proved in the present case. It goes without saying that the possession of one co-sharer is deemed to be the possession of all the co-sharers.

Thus, no ground is made out to interfere in the finding of learned trial Court on issue no.4 as per which the factum of Oral Family Settlement has not been found to be proved in the present case. In the back drop of issue no.4 being held against defendant no.1 / appellant, issue no.2 has rightly been held in favour of plaintiffs. Likewise, no ground is made out to interfere in the finding returned on issue no.3 as the present suit being suit for partition filed by the co-sharers is duly maintainable. The finding on issue no.4A is also affirmed as the possession of one co-sharer is deemed possession of all the co-sharers.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. She also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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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 the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

21.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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