

RSA No. 3639 of 2017 (O&M)

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

RSA No. 3639 of 2017 (O&M)

Date of Decision: 18.7.2017

Kular Medical Education and Research Society (Regd.) Punjab through its
President Gurbax Singh

.....Appellant

Vs.

Jagjiwan Singh and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. V.K. Jindal, Sr. Advocate with
Mr. Vikas Gulia, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of defendant No.10, is directed against the preliminary decree dated 4.5.2015 passed by the learned trial court, in the suit for separate possession by way of partition of the shares and also against the impugned judgment and decree dated 6.5.2017 passed by the learned first appellate court, whereby first appeal of defendant No.10-appellant was dismissed, upholding the abovesaid preliminary decree of learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 and 3 of its impugned judgment, are that respondents No. 1, 2

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and 3 filed a civil suit for seeking separate possession by way of partition of the suit property, as detailed in the suit, situated in the revenue estate of Village Kishangarh, Tehsil Khanna, District Ludhiana, and for seeking permanent injunction restraining the defendants from changing its nature and raising any kind of construction over any specific portion, alienating any specific portion and for mandatory injunction directing them to demolish and remove their construction over the property falling to the share of the plaintiffs.

It was pleaded that the suit land was joint. No partition took place. Plaintiffs purchased property from Baldev Singh-defendant, vide sale deeds dated 23.05.1996 and 09.12.1999. An injunction application filed in a civil suit for seeking permanent injunction by the plaintiffs stood disposed off with the observation that sale of specific portion was the sale of share subject to partition. Plaintiffs had also filed a partition application on 03.12.2004 before A.C. Ist Grade, Khanna. During the pendency of the earlier civil suit No. 1222 and the partition application, defendants raised construction illegally. All the co-owners were deemed to be in joint possession of each and every inch of joint holding. Defendants refused to accede to the request of the plaintiffs.

Defendants were put to notice. It seems that other co-defendants of the appellants did not contest the suit. It was only defendant No.10-appellant who appeared and filed contesting written statements, raising basically one issue, i.e. two khewats could not have been consolidated for the purpose of partition of the suit land. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled to separate

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possession by way of partition of their share in the suit property? OPP

2. Whether the plaintiffs are entitled to Permanent Injunction as prayed for? OPP

3. Whether the plaintiffs are entitled to Mandatory Injunction as prayed for? OPP

4. Whether the plaintiffs are in exclusive possession of Khasra No. 235? OPD

5. Whether the present suit is not maintainable? OPD

6. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD

7. Whether the present suit is barred under Order 2 Rule 2 CPC? OPD

8. Whether the defendants are in possession of land situated in Khasra Nos. 253 and 254 along with other co-sharers except the plaintiffs? OPD

9. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record 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 made out a case for partition of the suit land. Accordingly, while observing on issue No.3 that it will be decided at the time of passing the final decree, learned trial court passed the preliminary decree dated 4.5.2015 in favour of the plaintiffs. Feeling aggrieved, only defendant No.10 filed its first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 6.5.2017. Hence this regular second appeal at the hands of defendant No.10.

Heard learned senior counsel for the appellant.

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Placing reliance on the judgment of this Court in **Roop Ram Vs. Raj Kumar and others, 2014 (3) RCR (civil) 215**, learned senior counsel for the appellant submits that since the learned courts below have failed to appreciate that consolidation of two khewats bearing No. 135 and 133 would cause confusion and prejudice, the impugned judgments and decrees passed by the learned courts below are contrary to the facts of the case as well as judgment of this Court in **Roop Ram' case** (supra). He further submits that consolidation of two khewats for the purpose of partition of land thereunder is not permissible in law, unless there are joint co-owners of both the khewats. He prays for setting aside the impugned judgments and decrees passed by the learned courts below.

Having heard learned senior counsel for the appellant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the learned courts below proceeded on a factually correct and legally justified approach, the impugned judgments and decrees deserve to be upheld and the instant appeal is liable to be dismissed, for the following more than one reasons.

A combined reading of both the impugned judgments and decrees would show that the learned courts below were well conscious about the shares of the parties in the suit land. It is neither pleaded nor argued case on behalf of the appellant that its share was not being properly identified or specified in the impugned judgments and decrees. Appellant has a share in joint khewat No. 133 to the extent of 2 kanal 16 marla. This share has been clearly identified and specified by both the learned courts below, while passing the impugned judgments and decrees. In this view of the matter, it

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can be safely concluded that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

So far as the judgment of this Court in **Roop Ram's case**, relied upon by learned senior counsel for the appellant, is concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, the same has not been found to be of any help to the appellant, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

No legal bar has been created against clubbing of two khewats for the purpose of partition of the land thereunder. Further, learned senior counsel for the appellant could not point out, as to what kind of prejudice was likely to be caused to the appellant, while complying with the preliminary decree passed by the learned trial court, which has been upheld by the learned first appellate court. Having said that, this Court feels no hesitation to conclude 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.

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Learned trial court was well justified while not deciding issue No.3 at the time of passing the impugned preliminary decree. Plaintiffs were seeking relief of mandatory injunction, directing respondent No.10 to demolish and remove the construction raised over the joint property, i.e. property in dispute. This was the justified reason with the learned trial court to keep findings on issue No.3 in abeyance, making it clear that this issue shall be dealt with at the time of passing of final decree. While making relevant observations qua issue No.3 in para 20 of the impugned judgment, learned trial court has protected the interest of the appellant about the construction raised.

Under these undisputed facts and circumstances, apprehension gathered by the appellant and also the argument raised by learned senior counsel for the appellant in this regard, have been found wholly misplaced. It seems that the appellant is presuming too much against itself, without there being any basis for such an apprehension. In fact, both the impugned judgments and decrees passed by the learned courts below have been found based on sound reasons and the same deserve to be upheld, for this reason as well.

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. Cogent findings recorded by the learned first appellate court in para 14 to 17 of its impugned judgment, which deserve to be noticed here, read as under:-

*“On the other hand, the appellant/ defendant No.
10 has purchased the land vide Sale Deed dated*

13.07.2004, attested copy Ex.D7, from the same person Baldev Singh son of Shyam Singh of his interest in Khasra Nos. 253 and 254, besides other Khasra Numbers. However, nothing was purchased from Khasr No. 235. With this Sale Deed, appellant/ defendant No. 10 has stepped into shoes of Baldev Singh qua his right, title and interest in Khasra Nos. 253 and 254 as sold by him. Vide Sale Deed dated 05.11.2009, attested copy Ex.P5, the Successors-in-interest of said Baldev Singh son of Shyam Singh namely his widow Swaranjit Kaur, daughter Karamjit Kaur and son Gurdeep Singh sold land to defendant No. 10/ appellant, however, no area of Khasra numbers in question was sold.

In this way, both the plaintiffs/ respondents No. 1, 2 and 3 on the one hand and defendant No. 10/ appellant on the other hand have purchased a right, title and interest of Baldev Singh in the joint land, which amounts to the sale of his share. Delivery of a specific portion of the joint land does not mean that the said specific land has only been sold. It amounts to the sale of share and right, title and interest of the Vendor. Once the contesting parties have purchased a share in the joint land, it is subject to partition, as and when, it is sought by any of the co-sharers, which in the case in hand is sought by the plaintiffs/ respondents No. 1, 2 and 3.

The arguments of learned counsel for the

appellant that Sale Deeds have rebutted the presumption of truth attached to the Jamabandis, is not tenable as through Sale Deeds only a share and right, title and interest of a co-sharer has been purchased/ sold. If a construction has been raised, it is always subject to final partition, in which the appellant/defendant No. 10 will always be at liberty to seek claim of the area in their favour over which, they have raised the construction, having been within their share.

In the case in hand, the learned Trial Court has merely determined the shares of the parties, which are not disputed and only a Preliminary Decree has been drawn. The claim of the appellant/ defendant No. 10 will be subject matter of consideration and adjudication at the time of considering the final partition by the learned Trial Court.”

During the course of hearing, learned senior 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. He 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

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Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.

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.

18.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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