

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.106

RSA No.3684 of 2017 (O&M)
Date of decision: 18.07.2017

Mohinder Kumar

....Appellant

versus

Shashi Bala Paul and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ravi Kant Sharma, Advocate
for the appellant.

* * *

DEEPAK SIBAL, J. (Oral)

C.M. No.8947-C of 2017

For the reasons mentioned in the application, the delay of 03 days in refileing the appeal is condoned.

CM stands disposed of.

C.M. No.8948-C of 2017

For the reasons mentioned in the application, delay of 05 days in filing the appeal is condoned.

CM stands disposed of.

Main Appeal

The appellant was one of the defendants in a suit for partition with possession instituted by the plaintiff-respondent No.1 which was decreed by both the trial Court as also the Appellate Court.

The case set up by the plaintiff-respondent No.1 before the trial court was that Karam Chand Shenmar son of Gahya Ram was owner of

House No.3226, Sector 15-D, Chandigarh which comprises of a ground floor, small Annexee, small Garage, front courtyard, back courtyard and a first floor (for short the 'suit property'). Karam Chand Shenmar died on 02.03.2004 leaving the appellant, plaintiff-respondent No.1 and predecessor in interest of respondent No.2 (i) (ii) (iii) & (iv) as his legal heirs. Before his death, Karam Chand Shenmar executed a Will which was duly registered on 03.11.2003 through which he bequeathed the suit property as under:-

- (1) First floor is to be inherited by the predecessor in interest of respondent No.2 (i) (ii) (iii) & (iv)- Surinder Kumar.
- (2) Ground floor to be inherited in equal share by the appellant and the plaintiff-respondent No.1.

It was further the case of the plaintiff-respondent No.1 that on 29.03.2004, the appellant executed a General Power of Attorney in favour of the plaintiff-respondent No.1 in respect of the suit property for getting the same transferred in the record of Estate Office, Chandigarh, on the basis of which after the death of Karam Chand Shenmar, a transfer application was filed before the Estate Officer, Chandigarh. However, when Karam Chand Shenmar expired, the appellant, who was living in the United Kingdom came to India and openly showed disagreement to the half share given to him by his father and therefore, executed another General Power of Attorney dated 30.08.2004 in favour of one Surjit Lal who started interfering in the peaceful possession of the plaintiff-respondent No.1 in the suit property. Therefore to avoid any further bad blood between the siblings, the present suit for the reliefs as mentioned above, was preferred by the plaintiff-respondent No.1.

Upon notice, the defendants to the suit appeared and filed separate written statements. The appellant, who was defendant No.1 before the trial Court did not dispute the execution of the aforesaid Will by Karam Chand Shenmar as also the fact that the parties to the suit, in terms of the Will, were co-sharers of the suit property. However, he disputed the possession of plaintiff-respondent No.1 on the ground floor and further stated that the partition of the property could not be allowed as the parties to the suit were not recorded as co-sharers in the record of the Estate Office, U.T., Chandigarh. He further admitted that he had executed a General Power of Attorney dated 29.03.2004 in favour of plaintiff-respondent No.1 but the said General Power of Attorney was cancelled by him on 08.10.2004.

Defendant No.2 to the suit was one Surinder Kumar, who had expired and therefore, written statement on his behalf was filed through his legal heirs in which they had raised no objection to the partition of 50% share of the plaintiff-respondent No.1 and the defendant-appellant No.1 on the ground floor of the suit property in terms of the Will executed by late Karam Chand Shenmar.

The trial Court after noting that the parties to the suit had admitted the execution of the Will by Karam Chand Shenmar and respondent No.1 to be a co-sharer in the suit property as also that there were no other legal heirs of Karam Chand Shenmar went on to reject the appellant's objection that the suit for partition instituted by respondent No.1 could not be decreed only for the reason that the parties to the suit were not reflected as share holders in the suit property in the records of the Estate Office, U.T., Chandigarh. It was held that once the appellant had admitted

respondent No.1 to be a co-sharer in the suit property as also the Will of Karam Chand Shenmar through which different portions of the property had been very distinctly bequeathed amongst the parties to the suit, it was not open for the appellant to raise such a contention that the suit for partition could not be decreed for want of the names of the co-sharers finding mention in the records of the Estate Office, U.T., Chandigarh. The objection of the appellant with regard to respondent No.1 not being in possession of the ground floor was also considered and rejected by the trial Court after holding that respondent No.1 being a co-sharer would be deemed to be in possession unless there was plea of her ouster by any other co-sharer which was not there. Respondent No.1 was thus held, entitled to partition of half share of the ground floor.

The appellant preferred an appeal to challenge therein the afore-referred judgment and decree passed by the trial Court, which was rejected by the Appellate Court after recording therein that in view of the admission by the appellant that respondent No.1 was a co-sharer in the suit property and to the execution of the Will by Karam Chand Shenmar, mere non entry of the names of the parties with regard to their share holding in the records of the Estate Office, U.T., Chandigarh would not come in the way of respondent No.1 for seeking the relief of partition as such entries in the records of the Estate Office, U.T., Chandigarh would be akin to mutation entries which as per settled law conferred no right. The objection raised on behalf of the appellant that respondent No.1 should have first filed a suit for declaration regarding the Will and then the suit for partition was also rejected not only in view of the admission by the appellant to the execution of the Will of Karam Chand Shenmar but also for the reason that

the same would have only led to multiplicity of litigation which should be avoided.

On the rejection to his appeal by the Appellate Court, the present second appeal has been preferred by the appellant.

Learned counsel for the appellant has raised two issues. He submits that the suit for partition filed by respondent No.1 could not have been decreed without there being an entry in the record of the Estate Office, U.T., Chandigarh, showing the co-sharers to the property in question as share holders. It is further submitted that the appellant had filed an application before the trial Court for framing of additional issues and without a decision thereupon, the trial Court went on to finally decide the suit which acted to the prejudice of the appellant. Learned counsel further relied upon Rule 16 of the Chandigarh Estate Rules, 2007 (for short the '2007 Rules') to submit that no fragmentation or amalgamation of any site or building in Chandigarh was permitted.

The first submission is required to be considered only to be rejected. Once it was not disputed by the appellant that respondent No.1 alongwith other parties to the suit were co-sharers in the suit property as also to the execution of the registered Will of Karam Chand Shenmar which in clear terms had bequeathed different portions of his property between his daughters and sons (parties to the suit), the objection that partition could not be permitted merely because a formal entry had not been made in the Office of the Estate Officer, U.T., Chandigarh, showing the parties to the suit to be shareholders cuts no ice with me. The Appellate Court has rightly held that such a record being maintained by the Office of the Estate Officer, U.T., Chandigarh, would be akin to mutation which as per settled law confers no

rights. Such entries may assume importance if either of the parties to the litigation dispute the factum qua the share in the property being claimed by them which is not so in the present case. Thus, the requirement of a formal entry in the record of the Office of the Estate Officer, U.T., Chandigarh, that too at the behest of the appellant who had not disputed the factual position as noticed earlier would in my opinion pale into insignificance. Had the facts been different, the import of such an entry would have been looked into from a different angle.

The application filed by the appellant seeking framing of additional issues is found on the record and it is correct that the same was not decided by the trial Court. However, on the above plea having been raised, the Appellate Court considered the application on its merits and rejected the same on the ground that the issues sought to be framed through that application caused no serious prejudice to the appellant's case. The Appellate Court further opined that the application preferred by the appellant was not having its genesis in the written statement filed by him and therefore, since the additional issues sought to be framed at the instance of the appellant were not backed by his own pleadings the same were not required to be framed. It was thus held that such application having not been decided would not affect the merits of the case as even if it had been decided it would only deserve to be rejected. Nothing could be pointed out to persuade me to take a different view. Even otherwise, being in agreement with the findings returned by the Appellate Court in this regard, the same are affirmed.

The reliance of the learned counsel for the appellant on Rule 16 of the 2007 Rules is also misconceived. The above Rules were notified on

17.11.2007 and as per Rule 1(ii) of the 2007 Rules, the same are applicable to all allotments and/or auctions made after the said date. It is not disputed by learned counsel for the appellant that the allotment of the property in question is prior to 07.11.2007 and therefore, on a query posed whether 2007 Rules would apply to the facts of the case, no worthwhile answer came.

In view of the above and as nothing having been shown to me otherwise, it is held that the 2007 Rules would not apply to the facts of the case.

In view of the above, I find no reason to interfere with the concurrent findings recorded by both the trial court as also the appellate court and finding that in the present second appeal no question of law, much less a substantial question of law arises for determination, the same is dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

July 18, 2017

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No