

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.4051 of 2017

Date of decision:24.8.2017

Rajinder Singh through his LRs

...Appellants

Versus

Ajit Singh @ Jagjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Jag Nahar Singh, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgments and decrees passed by the learned courts below, whereby suit for possession by metes and bounds filed by the plaintiff was decreed by the learned trial court, vide its impugned judgment and decree dated 31.7.2015 and first appeal of the defendant was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 16.5.2017, defendant through his legal representatives has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the land in dispute was owned and possessed by plaintiff and defendants in equal share and there remains a dispute amongst the parties regarding the utilization of the land in dispute. The parties were unable to pull on smoothly with their joint possession. The plaintiff wanted to get his share separated from the defendants by metes and bounds as mentioned in head note of plaint. The

defendant threatened that he would change the nature of land in dispute by raising construction or making additions or alterations in the land or will alienate by way of sale etc. any part of portion of the land. Plaintiff requested the defendants to admit his lawful claim and requested not to interfere into his lawful and peaceful possession over the land in dispute in any manner but the defendants refused to accede the genuine request of plaintiff and refused to give share of plaintiff to him.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- i. Whether the plaintiff is entitled to the relief of possession of the suit land by way of partition by metes and bounds ? OPP
- ii. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for ? OPP
- iii. Whether the suit is legally maintainable ? OPP
- iv. Whether the plaintiff has no locus standi to file the present suit ? OPD
- v. Whether the plaintiff is estopped from filing the instant suit by his own act, conduct and deeds ? OPD
- vi. Whether the plaintiff has no cause of action to file the present suit ? OPD
- vii. Whether the suit is band for mis-joinder and non-joinder of the necessary parties? OPD
- viii. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction ? OPD

ix. Whether the plaintiff has not come to the Court with clean hands ? OPD

x. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved his case, by leading cogent and convincing evidence. Accordingly his suit for possession by way of partition by metes and bounds of the suit land measuring 2K-17M was decreed by the learned trial court, vide its impugned judgment and decree dated 31.7.2015. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 16.5.2017. Hence, this regular second appeal, at the hands of legal representatives of unsuccessful defendant.

Heard learned counsel for the appellant.

Share of both the parties in the unpartitioned and joint suit land was not in dispute. Objection raised by the defendant-appellant before the learned courts below was that suit for partition was not maintainable, it being a suit for partial partition, did not bring any fruit for the reason that the learned courts below were well justified in rejecting this objection. It is so said because defendant did not file any counter claim. His entire case was based on an alleged oral family partition on the basis of a family settlement. However, the defendant-appellant miserably failed to prove his

pleaded case. In this view of the matter, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is also a matter of record that alleged oral family partition was neither acted upon between the parties nor it was incorporated in the relevant revenue record. In such a situation, said oral family settlement would be of no consequence. Suit property remained joint amongst the co-sharers thereof. In this view of the matter, the suit for possession by way of partition by metes and bounds filed by the plaintiff was very much maintainable.

Dispute was between the real brothers. It seems that they could not partition the suit land mutually by arriving at an amicable settlement. However, once the share of the plaintiff has gone undisputed and he duly proved his pleaded case by leading cogent and convincing evidence, his suit was rightly decreed by both the learned courts below. Under these undisputed facts and circumstances of the case, this Court is of the considered opinion that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 16 and 17 of its impugned judgment, which deserve to be noticed

here, read as under:-

“The suit for possession by metes and bounds was filed by respondent-plaintiff with regard to land measuring 2 kanals 17 marlas falling in khasra No. 158 and with regard to the same the plaintiff-respondent has proved copies of jamabandis Ex. P2 and P3 from perusal of which it reveals that Ajit Singh respondent has ½ share in the land measuring 2 Kls 17 Mls falling in khasra No. 158 and Rajinder Singh son of Chanan Singh has ½ share in the same. The defendants-appellants have alleged oral family partition between the parties but have failed to substantiate their version and oral evidence in this regard cannot be considered. Even otherwise, the oral family partition which was not reflected in the revenue record also cannot be considered. As per record land measuring 2 Kls 17 Mls falling in khasra No. 158 is the joint property between parties only. So far as the jamabandis Ex. D3 and Ex. D4 are concerned the property mentioned therein between the parties which is falling in khasra No. 114/5/8 0 Kl 3 Mls, 14/5 0 Kl 2 Mls and 18/0 Kl 2 Mls cannot be subject matter of the litigation before the civil Court so there is no question of partial partition between the parties and learned Lower Court has framed proper issues which emerges from the pleadings of the parties. Proper opportunity has been given to the parties to lead their evidence. The preliminary decree only has been passed by learned Lower Court and judgment and decree passed by learned Lower Court is perused and the same is not a final decree for partition. The learned counsel for the appellants has misconstrued the findings given by learned Lower Court.

The learned counsel for the appellants has relied upon the copy of FIR got registered by Jagjit Singh plaintiff/respondent which is Ex. D6 on the file and if the

contents of the same are perused it does not prove in any manner that at the time of getting the said FIR registered plaintiff-respondent has mentioned about the suit property between the parties to have been partitioned earlier by way of oral partition rather he is talking about the landed property regarding which the partition has already been made and he has stated that he has conducted the repair of his ancestral house. Even otherwise whatsoever has been mentioned in the FIR that cannot be looked into for the purpose of deciding this appeal or civil suit. All the arguments advanced by learned counsel for the appellants are not tenable and it is proved that there was no oral partition between the parties or partial partition is being sought by plaintiff-respondent.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in both the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is sine qua non for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned first appellate courts and the same deserve to be upheld, for this reason as well. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

24.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No