

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

**RSA No.4080 of 2017 (O&M)
Date of decision: 29.08.2017**

Mawasi Ram (deceased) through LRs

... Appellant

Vs.

Mohan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the concurrent findings of facts recorded by both the learned Courts below, whereby his suit for permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 29.04.2015 and his first appeal was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 24.04.2017, upholding the judgment and decree of the learned trial Court, plaintiff through his legal representatives has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that plaintiff had sought a decree for

permanent injunction restraining the defendants from alienating the suit land in the shape of plots with specific khasra numbers and from changing the nature of the suit land by raising construction, until or unless the suit property is partitioned by metes and bounds, on the grounds that the plaintiff was co-sharer in joint possession over the land bearing khewat No.3284, khatoni No.3751, rect. No.306, killa No.4 (2-13), 5/1 (7-8) measuring 10 kanals 1 marla and khewat No.3278, khatoni No.3745, rect No.306, killa No.6 (8-0), 7 (4-8), 13/2 (0-4), 14 (5-19), 17 (7-9), 18/1 (0-8), 24 (7-9), 25/1 (1-14), 28 (7-9), 29 (1-15), 30 (13-0), 32 (0-11), rect. No.332, killa No.3 (9-10), 4 (8-0), 5 (8-0), 7 (8-0), 8 (8- 12), 13/1 (2-15), rect. No.325, killa No.12 (4-5), 16/2 (3-13), 17 (8-0), 18 (8-0), 19/1 (1-13), 22 (2-10), 23 (8-0), 24 (8-0), 25 (8-0), total measuring 155 kanals 4 marlas, as per jamabandi 2001-2002. The abovesaid land was agricultural, one except rect. No.306, killas No.29, 30 and 32, where some residential houses had been constructed by the co-owners. The suit land had not been partitioned. The plaintiff and defendants No.1 to 13 were the descendants of common ancestor Shri Brij Lal son of Shri Sukh Ram, which was acquired jointly by them, however, defendants No.14 to 19 were the purchasers of some portion of the suit land and they had also become co-sharers in the joint land. Defendants No.1 to 13 were selling valuable portion of the suit land by way of plots and had no right to change the nature of the suit land until or unless it is partitioned by metes and bonds. The defendants were requested, but request of the plaintiff remained barren of result, which necessitated to file the present suit.

Defendants were put to notice. Defendants No.10, 12 and 13 appeared and filed their contesting written statement, raising more than one

preliminary objections. Defendants No.5 to 9 and 14 filed their separate contesting written statement. Defendants No.1 to 4, 11 and 15 to 17 did not appear despite service and they were proceeded against ex-parte by the learned trial Court. Defendants No.18 and 19 also filed their joint and contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication to any of the written statements filed by the defendants.

On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit of the plaintiff is not legally maintainable? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff is estopped from his own act, conduct and acquiescence to file the instant suit? OPD
6. Whether the plaintiff has not come with clean hands before the court? OPD
7. Whether the suit of the plaintiff is false, frivolous and vexatious in nature? OPD
8. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
9. Relief.

In order to prove 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, learned trial Court came to the conclusion that the plaintiff has failed to prove his case for want of cogent and sufficient evidence. Accordingly, suit of the plaintiff for permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 29.04.2015. Plaintiff filed his first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 24.04.2017. Hence this regular second appeal at the hands of unsuccessful plaintiff through his legal representatives.

Placing reliance on the judgments of this Court in **Ram Niwas Vs. Jai Ram alias Tej Ram, 2000 (3) RCR (Civil) 738, Ronki Ram Vs. Prem Saini and others, 2007 (4) RCR (Civil) 304, Ram Chander Vs. Bhim Singh and others, 2008 (3) RCR (Civil) 685 and Naranjan Dass Vs. Nirmal Dass and others, 2014 (61) RCR (Civil) 280**, learned counsel for the appellant-plaintiff submits that the learned Courts below failed to appreciate the true factual as well as legal aspect of the matter, while passing their respective impugned judgments and decrees and the same are liable to be set aside. He further submits that since the mutual partition amongst the co-sharers was not incorporated in the revenue record, that would be of no consequence and could not have been made the basis for passing the impugned judgments and decrees by the learned Courts below. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

Having heard the learned counsel for the appellant-plaintiff at considerable length, after careful perusal of the record of the case and giving

thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the present appeal has been found without any merit, it is liable to be dismissed and the impugned judgments and decrees passed by the learned Courts below having been found based on sound reasons, deserve to be upheld, for the following more than one reasons.

It is the own pleaded and argued case on behalf of the plaintiff-appellant that he was original co-sharer in the suit property. Once it is so, he was very much party to the mutual arrangement arrived at between the parties for the purpose of their mutual partition. Consequently, parties to this amicable settlement, which was made the basis for a mutual partition, acted upon the said arrangement and were settled in their possession, as per their respective shares in the suit property. Some of the co-sharers sold their right in the joint suit property, whereas others raised construction on their earmarked separate portion, which came in their share.

This mutual arrangement was going on at the site for quite some long time. At this belated stage, plaintiff-appellant had a second thought and started raising the dispute about the abovesaid mutual arrangement already arrived at between the parties, to which he was also a party. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in

paras 16 to 20 of the impugned judgment, which deserve to be noticed here, read as under: -

“The plaintiff has examined himself, as PW-1, who would say, during his cross-examination that out of the suit land, firstly Satish son of Hartal has sold about 5-7 years ago, thereafter Mohan Singh has sold some portion then Narayan son of Sher Singh has sold twice, Maya Devi and Somwati behind the shops lying constructed in this area, have also raised construction of their houses, after purchasing share of others and they have raised construction of shops in 10 marlas. He has also raised construction of his house in the suit land. Brother of Man Singh and children of Hartal have raised construction of their houses in the suit land and they have also raised construction of boundary wall. They have filed a suit for partition in the Tehsil, which is subjudice and the co-sharers have left the site for passages and got the stones crushed for raising construction of road. All brothers have separated their land and separately cultivating in brotherhood, Mark-A bears his signatures. Stated it correct that share, which came to him 25 years ago, being cultivated by him and the portion, in which poultry farm is lying constructed, in which there is an electricity connection.

In view of the above deposition of the plaintiff, one thing is crystal clear that some arrangement was made between co-sharers and some of the co-sharers have raised construction including the plaintiff and some of the co-sharers have sold portion, out of the

suit land.

*In para No.7 of the law laid down in **Sant Ram Nagina Ram Versus Daya Ram Nagina Ram, AIR 1961 Punjab 528**, where a co-sharer is in possession of separate parcels under an arrangement consented to by other co-owners, which is not open to anyone to disturb the arrangement without the consent of others except by filing a suit for partition.*

*It is admitted case of both the parties that partition proceeding is subjudice before the ACIIG, otherwise, in **Pehalwan Chand Versus Hans Raj and others, 2012 (1) CCC 466** held, suit for injunction, co-owner cannot seek injunction against other co-owner, remedy of the plaintiff is to file a suit for partition. It has been held by our own Hon'ble High Court in **Jangir Singh Versus Narayan Singh and others, 2015 (1) CCC 315 (P&H)** that other co-sharer cannot restrain from raising construction, once a portion, of which he is in exclusive possession – being in exclusive possession, he is legally entitled to protection of his possession until joint land is partitioned.*

In the wake of above discussion, this court is not of the view other than the expressed by the learned trial court on all the issues and the findings rendered by the learned trial court are reasoned and sustainable in the eyes of law and the same are hereby affirmed and upheld. No doubt, issue No.2 remained undecided, but no arguments has been raised by either of the parties on issue No.2. More so, the plaintiff is the co-sharer and then it cannot be

said that the plaintiff having no locus standi to file the present suit, therefore, issue No.2 is decided against the defendants.”

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that each and every relevant aspect of the matter was duly considered and rightly appreciated by the learned Courts below, before recording their concurrent findings of facts. Once the parties were coming in their separate and settled possession as per their share on the basis of an old mutual arrangement arrived at between them, coupled with the fact that said mutual arrangement was actually acted upon by all the parties to said mutual settlement, plaintiff alone could not have been permitted to back out from the said mutual settlement. It is so said because if one of the parties to said mutual settlement is permitted to back out, the whole arrangement shall be disturbed and it would be an unending process, which shall cause serious prejudice to those co-sharers who had raised construction on their identified and separate share in the suit property.

Further, if one of the parties is permitted to back out from the mutual settlement, it will give rise to multiplicity of litigation, which shall cause serious prejudice to all the other co-sharers. It is also pertinent to note here that if some of the co-sharers, who acted upon the mutual settlement and accordingly sold their right in the suit property and as a consequence thereof, bonafide purchasers raised construction on the specified portion, which was purchased by them, will also suffer irreparable loss and injury. It is also a matter of record that the partition application, moved by the plaintiff himself before the revenue authorities, is pending consideration. Under these undisputed circumstances of the case, it can be safely concluded that the learned Courts

below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Coming to the abovesaid judicial precedents relied upon by learned counsel for the appellant, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found of any help to the appellant in the instant case, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund 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.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's

decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the

case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All

ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise 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. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs.**

Lekshmy Sarojini and others, 2009 (5) SCC 264.

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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

29.08.2017
vishnu

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