

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 126-A

SAO No.3 of 2017 (O & M)
Date of Decision: February 06, 2017

Balbir Singh

..... APPELLANT

VERSUS

Damanjit Singh & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. Rajinder Goyal, Advocate, for the appellant.

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Jaspal Singh, J

1. Challenge in this appeal is to judgment/order dated December 20, 2016 passed by the Additional District Judge, Ludhiana, whereby an application moved under Order I Rule 10 CPC filed by respondent Nos.5 and 6 (Arvind Singh and Devinder Singh) has been allowed; and appeal filed by respondent No.1 to 4 has been disposed of while remanding the case back to the trial court with direction to allow respondent Nos.5 and 6 who have been freshly impleaded as defendants to file their written statement and to lead evidence if any, and then to decide the matter afresh.
2. Shortly put, the facts giving rise to the instant lis are that Civil Suit No.91 of March 07, 2003 captioned as 'Balbir Singh Vs.

Bakhtawar Singh & others' was decreed vide judgment & decree dated December 20, 2013 passed by the trial court, to the following effect:-

“17. After the thorough discussion on all of the above mentioned issues, this Court has come to the conclusion that plaintiff has duly proved his case. As such, suit stands decreed with costs. Preliminary decree is passed to the effect that he is entitled to separate possession by partition of 1/5th share in property measuring about 125 sq. yards bearing Municipal Corporation's No.B-II, 1375, C.P.O. Road, Bhadaur House Ludhiana, specifically shown as red in the site plan as mentioned in plaint and bounded as in East with Central Post Office, Ludhiana, in West with Street, in North with Vacant Plot of some other owners and in South with Main Road (old C.P.O. Road) situated on old C.P.O. Road, Bhadaur House, Ludhiana. Further, defendants themselves, their agents, attorneys or any other person claiming under them from are restrained from alienating, transferring in any manner or from delivery the possession of the property in question to any other person unless and until the property in question is partitioned by meets and bounds. Plaintiff is also entitled to rendition of accounts. Thus, defendants are directed to hand over/deliver the exclusively owned property of the plaintiff i.e. property comprising of gold jewellery which in turn is comprising of 12 bangles gold 9weighing 18 tolas), 2 ladies “Karha” (6 tolas), 2 rings; one red stone one general (3 tolas), one “Rani Har Set” (8 tolas), 2 chains with pendle set (9 tolas), one set long “Kantey” (4 tolas), and one Tikka with chain (2 tolas), silver jewellery comprising of 2 set “Pajeb” (15 tolas), a set of Saree key ring (2 tolas) and a Saree Pata (8 tolas) and other articles like a pair of steel cots, one steel almirah, 4 steel chairs, one centre table with steel fittings, one steel box (Petti) containing articles like an old Radio, one V.C.R., clothes, household goods, bed sheets, bed carpets (duries) etc., to the plaintiff within three months of this judgment and decree. Decree-sheet be prepared and file be consigned to Record-Room, Ludhiana.”

3. Feeling aggrieved against the aforesaid judgment & decree, defendant No.3 alongwith legal heirs of defendant No.4, preferred an appeal, during the pendency of which, an application under Order I Rule 10 CPC was moved by respondent Nos.5 and 6 for their impleadment as defendants. The said application was allowed and they were ordered to be impleaded as defendant Nos.5 and 6, and the case was remanded back to the trial court for deciding it afresh vide judgment/order dated December 20, 2016, which has necessitated the filing of instant appeal.

4. While assailing the impugned judgment, it has been submitted by learned counsel for the appellant that the impugned order is not sustainable in the eyes of law for various reasons. Respondent Nos.5 and 6, who had moved an application under Order I Rule 10 CPC, are none-else but the sons of respondent No.7 (Manmohan Singh) and it is not their case that they are separate in mess and residence. Respondent Nos.5 and 6 were well aware and had knowledge about the pendency of suit before the trial court which was being pursued by their father as also by defendant Nos.3 and 4. Otherwise also, respondent Nos.4 and 5 are neither necessary nor proper parties for adjudication of the controversy between the parties. Particularly, respondent Nos.5 and 6 are claiming their rights on the basis of Will dated April 04, 2000 alleged to have been executed by Smt. Maya Devi in their favour, as also in favour of defendant Nos.3 and 4.

5. Learned counsel for the appellant has further contended that even the said Will was tried to be proved by defendant Nos.3 and 4 before the trial court but the trial court concluded that defendant Nos.3 and 4 have failed to prove the due execution of Will dated April 04, 2000. It was only due to the said reason, Issue No.4 was decided against defendant Nos.3 and

after more than a decade. All these facts have been over-looked by learned lower appellate court while deciding the aforesaid application and remanding the case to the trial court for fresh decision. Thus, impugned order being not sustainable in the eyes of law deserves to be set aside.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant but find the same to be without legal and factual weight.

7. Undisputably, property in dispute was owned and possessed by Smt. Maya Devi, of which, appellant – plaintiff claims himself to be owner to the extent of 1/5th share and as such, seeks separate possession by way of partition. The said assertion of plaintiff – Balbir Singh has been sought to be scuttled away by the defendants by raising a specific plea that he has no concern with the suit property as Smt. Maya Devi had executed a valid registered Will in equal shares in favour of her grandsons i.e. applicants – Arvind Singh and Devinder Singh sons of Manmohan Singh as well as defendant Nos.3 and 4 namely Harbans Kaur and Balwinder Kaur. A specific objection was also taken in the written statement in this regard. But, despite that fact, appellant – plaintiff did not opt to implead the applicants as party to the suit. Not only this, even specific issues were also framed in this regard but he denied to proceed with the suit. As per Will dated April 04, 2000, in addition to defendant Nos.3 and 4, applicants are also the beneficiaries and have got an interest in the suit property. In the given circumstances, it can safely be concluded that the applicants are necessary parties for proper and effective adjudication of the matter in controversy and in their absence, they likely to suffer an irreparable loss and a great prejudice would be caused to them. Their impleadment cannot be denied for the

8. In the light of what has been discussed above, this Court does not find any infirmity or illegality in the impugned order so as to call for any interference. As such, the instant appeal is dismissed.

February 06, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No