

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.1496 of 1991
Date of decision:14.02.2018

Chowkh Raj

... Appellant

Vs.

Lekh Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Subhash Goyal, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for the respondents.

AMIT RAWAL J.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for partition has been dismissed by both the Courts below.

Before advertng to the rival contention of learned counsel for the parties, it would be apt to give preface of the matter.

The appellant-plaintiff instituted a suit for partition on the premise that he alongwith defendants were joint owners in possession of a double storey residential house to the extent of 1/4th share each as per the site plan which was earlier purchased by their father, vide sale deed dated 17.8.1959. It is pertinent to mention here that the suit was filed on 19.8.1987. Father, Mangal Ram died without any testamentary document and on his demise, plaintiff and defendants became owners to the extent of 1/4th share each by way of natural succession.

Upon notice, defendants contested the suit by filing a joint written statement and denied the jointness of the property. It was stated that defendants were owners of house in dispute having 1/3rd share each, in essence, claim of ownership of the plaintiff to the extent of 1/4th share was emphatically denied. It was also stated that the house had got only three portions in the plot on which it was constructed and was given to the defendants by their father at that time. Thereafter, the defendants built three separate portions in the year 1960 when they separated from their father. The father of the parties purchased another plot in the year 1959-60 in the name of Kasturi Devi, wife of Chowkh Raj - plaintiff and in the family settlement, that plot was given to the plaintiff and since then the plaintiff was in possession of the house.

Since the parties were at variance, the trial Court framed following issues:-

- “1. Whether the parties of the suit are joint owners in possession of the premises in suit? OPP*
- 2. Whether the parties to the suit have become owners of the suit land after inheritance to the extent of 1/4th share each? OPD*
- 3. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Relief.”*

The trial Court dismissed the suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. Subhash Goyal, learned counsel for the appellant-plaintiff submitted that in the absence of testamentary document or any other direct and cogent evidence, on demise of his father, Mangal Ram, the property was succeeded by all the sons, i.e., legal heirs by way of natural succession and therefore, could not have been denied the partition of the property. The respondent-defendants failed to bring on record any evidence with regard to a plot having been purchased in the name of wife and thereafter, alleged to have transferred in the name of plaintiff. Except the assessment entries, no relevant cogent evidence was produced to prove the alleged family partition. The aforesaid entries could not be taken into consideration for denying the claim. No doubt, oral partition is permissible but it has to be supported by direct and corroborative evidence to establish the same. In the absence of same, the suit was liable to be decreed.

Per contra, Mr.Amit Jain, learned counsel for the respondent-defendants submitted that though the plaintiff denied the oral partition and as well as allotment of plot in his favour, whereby, he had been living separate but fact of the matter is that both the Courts below relied upon Ex.PE and Ex.PF, copies of house tax assessment register for the year 1984-85 in which Ram Lal had been shown to be owner of the house no.37/2 and Juggannath had been shown to be owner of house No.36/2. Ex.PA, copy of house tax assessment register for the year 1978-79 in which Lekh Raj had been shown to be owner of house no.35/2. In the absence of any record with regard to ownership of the property in the name of their father, partition

could not have been granted and therefore, rightly has been rejected.

He further submitted that the concurrent findings of facts and law cannot be interfered with until and unless there is gross illegality and perversity and urged this Court for dismissal of the appeal as no substantial question of law arises for adjudication of the present appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees, as well as record of both the Courts below.

The documents, aforementioned, i.e. Ex.PA to Ex.PG proved that all three defendants, i.e., brothers of appellant-plaintiff were living in respective portions which have been allotted separate numbers, i.e., 35/2, 36/2 and 37/2 and all the house tax assessed was being paid by them. If at all, house was in the name of father, who had died much later, it could have been in the name of the father and not in the name of brothers. The factum of plaintiff living separately in a house built on the plot of 100 square yards, purchased earlier in the name of wife of plaintiff, had also not been denied.

Conceded position on record is that father before filing of the suit had died 18 years ago. No explanation has come forward in clamming the partition as late as in 1987.

In my view, the respondent-defendants have been able to prove the oral partition had taken place in the year 1962. Though there is no limitation for claiming the partition in the property but once the parties have resiled to the actual state of affairs existing at that point of time cannot volte-face. It is a case of aggrandizement. The findings of facts and law arrived at both the Courts below, much less arguments of Mr. Subhash Goyal, do not enable this Court to form a different opinion than the one arrived at as no

substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 14, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No