

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

RSA No.1837 of 1991 (O&M)

Date of decision : 11.05.2018

Ram Niwas

...Appellant

Versus

Madho Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate and
Mr. Ajit Lamba, Advocate for the appellants.

Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate and
Mr. Umesh Aggarwal, Advocate for respondent No.1.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the First Appellate Court.

The plaintiff had filed a suit for permanent injunction restraining defendant No.1 from alienating the shop situated at Jind. It is pleaded case of the plaintiff that three brothers, mother and five sisters including the plaintiff constitute a Joint Hindu Family and the property is owned by the aforesaid family. It is pleaded that defendant No.1 only has 1/9th share in the shop in dispute whereas he has agreed to sell the aforesaid shop in favour of defendant No.2-Madho Ram which is illegal.

Defendant No.1 contested and pleaded that some properties of

the family have been partitioned and the shop in dispute fell in the share of defendant No.1. Hence, he has right to sell the property.

Learned trial Court after examining the evidence decreed the suit filed by the plaintiff whereas learned First Appellate Court after re-appreciation of the evidence available on the file have recorded a finding that the property in dispute had fallen to the share of defendant No.1 and hence, defendant No.1 has a right to sell the property.

Learned counsel for the appellant has submitted that a reading of Ex.D1 and Ex.D1/A proves that this is a deed of partition. Such deed of partition was required to be compulsorily registered. Hence, it cannot be read in evidence. He has further submitted that defendant No.1 has pleaded that partition took place between the family members in the year 1968 whereas the evidence produced on file proves that the partition was in fact effected in the year 1971. He has further submitted that the learned First Appellate Court has not considered Ex.D10 which shows that the rent was being received on behalf of the Firm i.e. Kanshi Ram Nathu Ram and, therefore, the finding of the First Appellate Court is erroneous. He has further drawn the attention of the Court to the statement of defendant No.1 wherein he has stated that all the properties have not been partitioned and some properties were later on partitioned in the year 1987.

On the other hand, learned counsel for the respondents has contested the arguments of the learned counsel for the appellant.

In the present case, Ex.D1 and Ex.D1/A is copy of the writing made in the account books. No doubt, a reading of the aforesaid entry which was duly signed by all the three brothers, shows that it has been recorded

that the brothers have partitioned the properties mentioned therein including the shop in question. This writing is signed by the plaintiff also. The aforesaid writing is in continuation and part of the account book. First entry is of the year 1968, subsequent entry is of the year 1971 and last entry is of the year 1987. In the entry executed in the year 1971, various shops situated at various places were partitioned. The shop in dispute at Jind came to the share of defendant No.1. Other shops fell to the share of other brothers. It is further proved on file that at Village Julana, two shops are exclusively were given to the plaintiff and two another shops were given to Nathu Ram and one shop to defendant No.1. Even agricultural land owned by the parties had been partitioned and Ex.D11, a copy of mutation proves that fact. This mutation is sanctioned on the basis of the mutual partition between the family members in the year 1972. This mutual partition with respect to the agricultural land is also reflected in the subsequent jamabandi produced on file. By act and conduct of the parties and from other evidence available on the file, it is proved that the parties had partitioned the properties among the family members and hence, non-registration of Ex.D1 and Ex.D1/A (same document) pales insignificance as the partition between the parties has been acted upon. In view of the aforesaid discussion, there is no force in the first submission of the learned counsel for the appellant.

Second argument is with regard to the contradictory stand of defendant No.1 in the written statement and evidence. This Court has carefully seen the pleadings. Defendant No.1 has pleaded that there was partition between the family members in the year 1968. The defendant was replying with reference to the pleadings of the plaintiff which were only

confined to the shop situated at Jind. In reply, it has been pleaded that the partition took place between the family members in the year 1968. A careful reading of Ex.D1 proves that the partition of the shop in question was in the year 1968. Hence, there is no contradiction in the pleadings and in the evidence. Subsequent entries in the account book which are also part of the writing Ex.D1 in the year 1971 and 1987 but not referring to the suit property.

Next argument of the learned counsel for the appellant is that Ex.D10, the receipts issued against the receipt of payment of rent of the shop in question have not been considered. A careful reading of Ex.D10 proves that the shop in question was given on rent which was received by defendant No.1 on behalf of firm i.e. Kanshi Ram Nathu Ram. It is not proved on file that either the plaintiff or any other brother in the aforesaid firm Kanshi Ram Nathu Ram were partners. These receipts do not prove that the property in dispute is continues to be joint.

Last submission of the learned counsel for the appellant is that the number of properties are still joint. There is no dispute about that fact. In the present case, the parties have been partitioning the properties mutually on various occasions. First partition took place in the year 1968 which was followed by partition in the year 1971 and thereafter in the year 1987. Merely because some properties are still joint, inference cannot be drawn that the property in dispute is also joint particularly when Ex.D1 clearly proves that the property in dispute was partitioned amongst the family members and fell to the share of defendant No.1. Still further, learned First Appellate Court could not point out any substantive error in appreciation of

the evidence in the judgment passed by the First Appellate Court. The First Appellate Court has appreciated the evidence available on the file and have recorded a finding of fact.

In view of the aforesaid, there is no ground to interfere with the judgment passed by the learned First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No