

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 775 of 2011 (O&M)
Date of decision : May 22, 2018

Virender Singh and others

..... Appellants

Versus

Kanwar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. R. S. Sangwan, Advocate
for the appellants.

Mr. Vivek Lamba, Advocate
for respondent No.1.

Mr. S. N. Yadav, Advocate
for respondent Nos. 4,5,13,16 to 18, 25,30 to 35, 38,39 &
44.

Amit Rawal, J (oral).
CM No.2143-C of 2011

This is an application filed under Order 22 Rule 3 read with Section 151 CPC for bringing on record the legal representatives of the appellant. The legal representatives of the appellant are permitted to be brought on record as mentioned in para 2 of the application.

The application is allowed subject to all just exceptions.

RSA No. 775 of 2011 (O&M)

The present appeal is directed against the concurrent finding of fact whereby the suit for possession by way of partition in respect of suit land (hereinafter called as 'the land') described in the plaint situated in village Kalwari, Tehsil and District Mahendergarh had been dismissed on account of partial partition.

The aforementioned suit was filed on behalf of the appellant that the suit property is residential and was in the name of Dhanna @ Dhani Ram who was predecessor-in-interest of plaintiff and defendant Nos. 1 to 25. The property mentioned in serial No. 1 to 9 stood in the name of Umda @ Umed Singh and Sawai Singh. The father of the plaintiff Rachpal Singh son of Sawai Singh was at that time minor, therefore the name of Umda @ Umed Singh in respect of the aforementioned property was incorporated being 'Karta'.

The aforementioned suit land was owned in equal share between Umda @ Umed Singh and Sawai Singh. Sawai Singh died before the preparation of the consolidation and his son Rachpal Singh who is father of the plaintiff, was minor at that time and used to reside with his uncle (Tau) Umda @ Umed Singh. He belonged to a joint Hindu family. After the death of Richpal Singh plaintiffs were his only legal heirs. After the death of Radha widow of Ramsahai son of Dhanna @ Dhani Ram her property was inherited by Richpal and Umda @ Umed Singh in equal share. Sewa Singh son of Jai Ram cousin of Dhanna @ Dhanni Ram had one son Ramlal. After the death of Ramlal the aforementioned property was inherited by his widow and after her death by Umda @ Umed Singh. The plaintiff was co-sharer in the land by inheritance from aforementioned persons as per the averments made in the plaint.

The aforementioned suit was not contested by defendant Nos. 27 and 28,30 and 33. Whereas other defendant Nos, 1,3,5(b), 9, 11-C, 12, 13,14(e), 15,18,19 and 20 contested the suit by raising preliminary objections qua maintainability, cause of action, limitation and further raised

the objection that entire property had not been included in the plaint, much less want of impleadment of all co-sharers. It was averred that Krishan Singh son of Gajraj Singh son of Shri Ram and Smt. Suman wife of Dharampal and wife of Ranjeet Singh were not impleaded as party and property had already been partitioned. Since parties were at variance, the trial court framed the following issues:-

- “1. Whether plaintiff is entitled for possession of suit property by way of partition as alleged?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the suit is time barred?OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 5. Whether the suit is good for non-joinder and mis-joinder of necessary party?OPD*
- 6. Whether plaintiff has not affixed proper court fee?OPD*
- 7. Whether the defendants are entitled for special costs under section 35 CPC?OPD*
- 8. Relief.”*

Plaintiff examined four (4) witnesses and brought on record Exhibits P-1 to P-16 Jamabandi, revenue record consisting of mutation to show the nature and character of the property being of the co-sharer/co-ownership.

Defendants examined five (5) witnesses and brought on record four documents.

The trial court on the basis of pleadings of the parties by noticing the pedigree table dismissed the suit on the premise that it was bad for partial partition.

with the same fate.

Learned counsel appearing on behalf of the appellants submitted that the finding rendered by both the courts below is bereft of the fact that contesting defendant did not place on record any material to form an opinion, for, non-inclusion of the property belonging to the co-sharers. In the absence of the same, the Court had no other occasion but to decree suit. If the pedigree table as explained in the plaint was not denied, the character of the jointness of the property had been proved through the aforementioned documentary evidence. The lower appellate court, being the last court of fact and law was enjoined upon an obligation to re-examine the issues and evidence but without adverting to the same, dismissed the appeal, thus urges this Court that there is illegality and perversity in the judgments of both the courts.

Mr. S.N. Yadav, learned counsel appearing on behalf of the respondents submitted that the appellant-plaintiff has failed to bring on record that they are successors-in-interest of Umda @ Umed Singh, for, no evidence has been placed on record, therefore, suit for partition was liable to be dismissed. There was a categorical pleading of non-inclusion of the joint property, therefore, rightly so the appeal has been dismissed for partial partition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force or merit in the arguments of learned counsel for the appellants, for, the appellants-plaintiffs have not been able to bring on record any material to show that they could succeed to the share of Umda, his uncle, for his father namely Richpal who was son of Sawai Singh, whereas Umda was brother of Sawai Singh, there was a

different line of succession, thus could not lay claim to the joint ownership by way of partition. It is hard to believe that there was no partition amongst Umda @ Umed Singh and Sawai Singh, for, no such averment had been made in the plaint that the suit property amongst Sawai Singh and Umda @ Umed Singh remained joint. Umda @ Umed Singh had a separate lineage and similarly Sawai Singh. Manphul Singh son of Rich Pal Singh son of Sawai Singh cannot lay claim to the property of Umda @ Umed Singh. Onus to prove the jointness of the property was on the plaintiff, for, it is a residential property. Having failed to discharge the onus under Section 101 of Indian Evidence Act. I am of the view that the courts below had no occasion to grant the relief as sought but rightly dismissed the suit.

Be that as it may, this Court while exercising power particularly when the appeal is filed under Section 100 CPC read with Section 41 of the Punjab Courts Act, 1918 can re-appreciate and examine the evidence. The arguments of learned counsel for the appellant have not been able to bring the case within the realm of illegality and perversity enabling this Court to form the different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

May 22, 2018

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Whether speaking/reasoned

Whether Reportable

Yes

Yes

(AMIT RAWAL)

JUDGE