

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4420 of 2012(O&M)

Date of Decision:3.12.2018

Karnail Singh and another

---Appellants

vs.

Piara Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Vipin Mahajan, Advocate
for the appellants

Mr. Arihant Goyal, Advocate
for the respondents

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed by the respondents-plaintiffs seeking permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiffs or dispossessing them illegally, forcibly from house marked 'ABEF' ground floor and 'EFGH' first floor, detailed in head note of the plaint and for possession of court yard marked 'EFCD' part of house marked 'ABCD' was decreed by the trial court vide judgment and decree dated 7.2.2002 that came to be affirmed in appeal, preferred by unsuccessful defendants, by the Additional District Judge, Gurdaspur.

The plaintiff-respondents staked their claim to the suit property on the premise that it was originally owned by Inder Singh, father of the plaintiffs and after his (Inder Singh) death, it was inherited by the plaintiffs and all of them are residing in separate portions of the house. Lakhwinder Singh plaintiff No. 2 has installed Atta Chakki in a portion of the house towards Fajjupura Road who had also taken loan from BECFEN CO. for installation of a saw mill which was sanctioned subject to hypothecation of the house in dispute. The portion 'EFCD' is a part and parcel of the house 'ABCD' and the plaintiffs had been using the same as a courtyard. Defendant No. 1, in connivance with other defendants, has illegally and forcibly encroached upon portion marked 'EFCD' and raised a wall of about six feet height at point 'EF' and opened a door in the wall 'FC'. Defendant No. 7 is in illegal possession of part of the house marked 'EFCD' belonging to the plaintiff.

Defendants No. 7 to 9 filed joint written statement and, in turn, raised preliminary objections inter alia that the suit is not maintainable; suit is bad for non-joinder and mis-joinder of parties, site plan attached with the plaint is wrong and the plaintiffs have not come to the court with clean hands. On merits, it has been denied that the plaintiffs are sole owners of the property in dispute or their father was sole owner of the same with the allegations that Inder Singh, Bawa Singh and Kirpal Singh sons of Santa Singh were joint owners of the property in dispute alongwith other house situated in village Fajjupur. In the year 1973, a family partition was effected between them in which the disputed property came to the share of Inder Singh and Bawa Singh in equal shares and Kirpal Singh was given other

house in lieu of his share. The northern side along with Buraj Sahib Raod came to the share of Inder Singh and the remaining half share on the southern side came to the share of Bawa Singh. The construction on the disputed property was jointly made by three brothers. Since the date of partition, all the brothers are in possession of their respective shares. Inder Singh and his sons are in possession of half share towards northern side. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Replication was filed by the plaintiffs-respondents and they reiterated their stand taken in the plaint while denying the allegations raised in the written statement.

The controversy between the parties led to framing of issues, reproduced in para 6 of judgment of the trial court. The parties were permitted to adduce evidence in support of their respective contentions. The plaintiffs adduced evidence, noticed in para 7 of judgment of the trial court whereas the defendants brought evidence detailed in para 8 thereof.

Having heard counsel for the parties in the light of materials on record and rival submissions made by their counsel, the trial court decreed the suit for permanent injunction in respect of property marked 'ABEF' ground floor and 'EFGH' first floor and a decree of possession qua portion 'EFCD', with costs.

As has been noticed hereinbefore, the defendants-appellants remained unsuccessful before the first Appellate court as their appeal was dismissed and findings of the trial court were affirmed without any variance.

Counsel for the appellants would argue that the plaintiffs

claimed Inder Singh their father to be owner of the suit property but they did not make reference to any sale deed in favour of Inder Singh. During the course of evidence, they produced on record document marked Ex. P6 but they did not produce a translated copy of the sale deed in compliance with the provisions contained in the High Court Rules and Orders. Another submission made by counsel is that findings of the courts rejecting the family partition, relied upon by the appellants, for want of registration are not legally correct and liable to be rejected.

Counsel for the respondents-plaintiffs has supported consistent findings of the courts with the submission that appellants have failed to substantiate that the same suffer from an error much less perversity, warranting intervention. It is further argued that document Ex. P6 sale deed executed in favour of Inder Singh by Bawa Singh son of Bhim Singh and Sarjan Singh in respect of 13 marlas of land situated in village Fateh Nangal, Tehsil Sadar District Gurdaspur was marked as such in the testimony of Lakhwinder Singh PW5. Lakhwinder Singh plaintiff was subject to searching and lengthy cross examination by the contesting party but there is no challenge to the original sale deed Ex. P6. According to counsel, no such issue was raised before the trial court nor in the grounds of appeal by the appellants that since translated copy of sale deed Ex. P6 in Punjabi or court language has not been produced, the same cannot be taken into consideration. It is further argued that as per plea of the defendants, the suit property was owned by Inder Singh, Bawa Singh and Kiepal Singh, partitioned amongst three brothers by way of family settlement but the defendants-appellants have not produced any evidence with regard to joint

ownership of Inder Singh, Bawa Singh and Kirpal Singh, therefore, there is no rebuttal to document Ex. P6 which is more than 30 years old and produced from proper custody and a presumption is attached thereto, in view of provisions of Section 90 of the Evidence Act, as has been held by the courts. The last submission made by counsel is that since Bawa Singh is not alleged to be co-owner of the suit property and other house subject matter of the alleged family partition, the courts have rightly refused to rely upon the family partition propounded by the defendants to stake their claim to portion marked 'EFCD'.

I have heard counsel for the parties, perused the paper book and records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to note that there is no dispute between the parties with regard to ownership and possession of house marked 'ABEF' ground floor and 'EFGH' first floor, stated to be owned and possessed by the plaintiffs-respondents.

The primary controversy between the parties is in respect of portion marked 'EFCD', claimed to be ownership of the plaintiffs being part of house 'ABCD'. The respondents-plaintiffs have claimed ownership of the entire suit property on the plea that it was previously owned by Sh. Inder Singh and on his death, it became ownership of the plaintiffs being sons of said Inder Singh. Undisputedly, there is no reference to the sale deed in the plaint but sale deed is a documentary evidence to establish plea of the plaintiffs qua ownership of the suit property. This document was marked as exhibit in the statement of one of the plaintiffs namely

Lakhwinder Singh. There was no objection raised by the contesting counsel when the original document was marked as Ex. P6. Perusal of cross examination of Lakhwinder Singh would reveal that there is no challenge to genuineness and authenticity of this document. Lakhwinder Singh in his cross examination had stated that property in dispute was purchased from Bawa Singh son of Bhim Singh vide sale deed Ex. P6 in the year 1946. He has denied the suggestion that the document has been forged. The plaintiffs have also proved by producing copy of jamabandi that vendors of sale deed Ex. P6 were the proprietors in the village.

So far as contention of the appellant that there is no reference to sale deed Ex. P6 in the plaint, as per the settled law, the pleadings must contain the material facts and not the evidence by which the same are to be proved. Sale deed is an evidence to prove title of Sh. Inder Singh, predecessor in interest of the plaintiffs. The document was tendered in evidence without any objection from the appellants. The Courts have rightly held that presumption available under Section 90 of the Evidence Act can be attached to the document. No such plea was raised by the appellants either before the trial court or appellate court that the same can not be taken in consideration for want of its translation in Hindi/Punjabi or English. The appellants have not produced its translation to say that it does not pertain to suit land. They have not even denied ownership of Inder Singh but raised the plea that it was co-owned by Inder Singh, Bawa Singh and Kirpal Singh, three brothers. They have failed to produce any document of title in favour of Inder Singh etc. This court, with a view to read and appreciate the document, got it translated from an official of the

High Court knowing Urdu. The sale deed was executed by Bawa Singh and Sarjan Singh residents of village Fateh Nangal in favour of Inder Singh son of Santa Singh. I view of the above, contentions aforesaid raised by the appellants are not meritorious, thus, untenable.

Bawa Singh was not owner/co-owner of the properties, subject matter of family partition. The family partition is in present and does not pertain to a past transaction. Since in view of the family partition, rights in immovable property valuing more than Rs. 100/- were sought to be created for the first time in favour of Bawa Singh, the courts have rightly held that the same can not be looked into/inadmissible for want of registration. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

3.12.2018
paramjit

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