

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

**RSA No.1310 of 2013 (O&M)
Date of Decision.16.05.2018**

Ram Mehar and another

...Appellants

Vs

Saroj and others

...Respondents

2. RSA No.1330 of 2013 (O&M)

Jeet Ram

...Appellant

Vs

Saroj and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P. Bhandari, Advocate
for the appellants.

Mr. Vivek Khatri, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

C.M. No.3509-C of 2013 in RSA No.1310 of 2013

C.M. No.3589-C of 2013 in RSA No.1330 of 2013

The application for impleading the legal representatives of deceased-respondent No.1, Jai Bhagwan is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

The amended memo of parties is taken on record and the registry is directed to put it at appropriate place.

Main cases

This order of mine shall dispose of two regular second appeals bearing No.1310 of 2013 titled as “Ram Mehar and others

Vs. Saroj LR of Jai Bhagwan (deceased) and others” and 1330 of

2013 titled as “Jeet Ram Vs. Saroj LR of Jai Bhagwan (deceased) and others” arising out of Civil Suit No.556 of 2004 titled as “Ram Mehar and another Vs. Jai Bhagwan and others” whereby the suit for possession by way of partition has been dismissed by the Court below and affirmed by the lower Appellate Court.

Succinctly facts which emanates from pleadings of the parties to the *lis* are that the appellants-plaintiffs instituted the suit aforementioned on the premise that the ancestors of the parties Ram Lal, Garibo, Phullu and Mukh Ram had one plot bearing Ahata No.2, House No.2 shown in the red colour in the site plan with letter ABCD were co-owners of the suit property having respective shares. The suit property had not partitioned till date and on account of non-partition of the property, appellants-plaintiffs were not able to raise construction over the portion, which would come to their share whereas the defendant No.1 to 6 without getting any partition effected were bent upon in raising the construction more than their share, therefore, sought partition by metes and bounds with the injunction that till the pendency of the suit seeking restraint against defendant No.1 to 6 from raising the construction.

Defendant No.1 to 6 contested the suit by raising preliminary objections qua estoppels, non-accrual of cause of action. On merits, it was submitted that the suit property was incorrectly described in the site plan. They had already raised the construction by spending an amount of ₹2 lacs on the portion referred to in the written statement. It was averred that compromise dated 7.8.2004 was executed which was signed by Jeet Ram, Ram Mehar, Ranbir

along with Nawal Singh, Nambardar and Bhago Devi, Sarpanch, Ran Singh and Bhateri in which the plaintiffs and Jeet Ram had left the suit property in favour of Jai Bhagwan and Shri Ram sons of Rameshwar i.e. defendant No.1 and 3.

Defendant No.11 and 12 filed the written statement and controverted the site plan stating that they had $\frac{1}{2}$ share in the suit property and defendant No.13 and 14 had also given their share of the land to them.

Defendant No.8 to 10, 13 and 14 filed the written statement admitting the claim of the plaintiffs.

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

“1. Whether the parties to the suit are joint owners in possession of the suit property to the extent to their respective shares as mentioned in para No.4 of the plaint?OPP

2. Whether the defendants are raising construction upon the executive portion of the joint property beyond their share? OPD

3. Whether the suit is not maintainable for want of any locus standi and cause of action in favour of the plaintiff? OPD

4. Whether the plaintiff has concealed true and material facts about the relinquishment and exchange of the shares of the suit land vide a written compromise? OPD

5. Whether the suit is deficient in court fee.

6. Relief.”

The plaintiffs in support of their pleadings examined four witnesses i.e. Suraj Bhan as PW1, Rajpal as PW2, Joginder Singh as PW3 and Ram Mehar as PW4 and tendered document Ex.P1 to P9 whereas the defendant examined Om Parkash as DW1, Ram Kishan as DW2, Raj Singh as DW3, Hakam Singh as DW4, Jagdish as DW5, Vinod Kumar as DW6, Jeet Ram as DW7, Sardar Singh as DW8 and Raj Singh as DW9 and tendered documents Ex.D1 to D9.

The trial Court by relying upon the document Ex.DW2/B, the alleged compromise dismissed the suit. Against the aforementioned dismissal of the suit, two appeals bearing No.195 of 2010 titled as “Ram Mehar and another Vs. Jai Bhagwan and others” and 194 of 2010 titled as “Jeet Ram and another Vs. Jai Bhagwan and others” were filed. The lower Appellate Court vide judgment and decree dated 28.01.2013 dismissed both the appeals. It is in this context, two regular second appeals have been filed.

This Court while admitting both the appeals framed the following substantial questions of law:-

- “1. Whether the share of the co-sharer could be deprived of in the absence of registered relinquishment deed.*
- 2. Whether a letter given by the parties to the police official could be treated as a relinquishment deed to deprive the share of the parties concerned?*
- 3. Whether the share of a party who was not a party to the communication sent to the police official could be*

lawfully deprived of.”

Mr. A.P. Bhandari, learned counsel appearing on behalf of the appellants raised the following submissions in support of memorandum of appeals:-

- (i) Ex.DW2/B dated 7.8.2004, the alleged compromise is a letter addressed to the concerned SHO whereby without reference to the property by mentioning as Plot No.2, the suit property had been partitioned but the same was never reflected in the revenue record, thus, cause of action accrued to institute the suit on 10.09.2004.
- (ii) Any statement made to the police is not permissible in the eyes of law, for, it was yet to be determined that which portion would fall to the parties to the *lis*, being co-sharers, for, possession was to be taken into consideration for drawing final decree but not for the purpose of adjudication of the suit for partition.
- (iii) Ex.DW2/B cannot be referred to as relinquishment deed. All co-sharers were not parties to the alleged compromise and therefore, in the absence of other co-sharers, the share could not have been taken out or divested as projected by the defendants. Defendant No.8 to 10 and 13 to 14 joined appellants. Even defendant No.11 and 12 also stated that the property was not partitioned by metes and bounds but the aforementioned pleadings have not been taken into consideration.
- (iv) During the course of hearing, he had brought to the

notice of this Court the translation of the alleged letter written to the police for the purpose of compromise. The same reads as under:-

“Sub: Regarding decision of plot No.2 in abadi deh.

That a complaint given on 7.8.04 by Jeet Ram s/o Marhu Ram, Ram Kishan s/o Desh Raj, Ran Singh s/o Ram Chander, Ramsher Singh s/o Udai Singh, Amar Singh s/o Shera against Jai Bhagwan. We by sitting with respectable persons have taken a decision that said plot No.2 has been given to Jai Bhagwan, Sri Ram s/o Rameshwar etc. Now we do not have any grievance. We request you that the complaint may be closed. We shall be thankful to you.”

(v) Defendants have failed to prove on record whether appellants were compensated in terms of money or some other land. Neither description of the land nor revenue record reflected the same. The application submitted to the police was totally vague and incomprehensive.

(vi) Release deed requires affixation of the court fee i.e. stamp duty. During the pendency of the suit, this Court in C.R. No.6648 of 2007 directed the parties to maintain status quo with regard to possession, thus, finding of the Courts below with regard to alleged relinquishment of the share is not sustainable in the eyes of law.

(vii) The alleged family settlement dated 19.08.2004 is

did not conform to the expression family settlement, though the defendants tried to give a colour of the family partition, thus, Courts below in such situation ought to have determined the share.

(viii) The defendants failed to confront the compromise to the witnesses of the appellants-plaintiffs, for, the same was emphatically denied. Onus shifted upon defendants to prove the aforementioned documents through the signatures. In the absence of the same, the Courts below remained totally oblivious of the aforementioned document, therefore, there is gross illegality and perversity.

Per contra, Mr. Vivek Khatri, learned counsel appearing on behalf of the respondents-defendants submitted that both the aforementioned documents depicted their exclusive possession. The plaintiffs had already relinquished their share, for, the dispute arose and the parties approached the police where aforementioned compromise was arrived at. Non-mentioning of the compromise in the revenue record cannot be fatal as oral partition is also permissible which could be inferred from the act and conduct i.e. express and implied of the parties/co-sharers. The concurrent finding of fact cannot be interfered unless and until there is gross illegality and perversity, thus, urges this Court for upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the

submissions of Mr.Bhandari, for, concededly the aforementioned documentary evidence had not seen light of the day. Neither any mutation in respect of the aforementioned partition nor any revenue record had been changed. The contents of the document do not envisage as to whether any measures for partition of aforementioned land had been taken into consideration or of some other land.

The alleged land reflected in the family settlement of 19.08.2004 was also bereft of the description. Any statement made before the police cannot be read in evidence against the person but the Courts below have erroneously not taken into consideration this very vital and important fact. If all, the defendants were sure about the partition, they could have confronted the same to the plaintiffs or got compared their signatures through expert, therefore, in my view, the lower Appellate Court ought to have drawn adverse inference. Having failed to do so, the judgments and decrees under challenge, prima facie, suffer from repugnancy, much less, fallacy. Defendants 8 to 10, 13 & 14 aforementioned had also supported the case of the plaintiffs that the suit property was not partitioned by metes and bounds. In these circumstances, the Courts below ought to have passed the preliminary decree by determining the share relegating the parties to seek partition by metes and bounds by moving application for final decree.

As an upshot of my finding, the substantial questions of law framed by this Court are answered in favour of the appellants-plaintiffs and against the respondents-defendants. The judgments and decrees under challenge are not sustainable in the eyes of law as they

suffer from illegality and perversity and are hereby set aside. The appeals are allowed. The preliminary decree is passed as per the relief sought in the plaint. Liberty is granted to the parties to move an application for preparation of final decree. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 16 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No