

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

RSA No.4240 of 2013 (O&M)

Sukhjeet Singh and Another

....Appellants

Versus

Mahinder Kaur (deceased through LRs.)

....Respondent

Date of Order: 27.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Sidhu, Sr. Advocate with
Mr. A.S. Sandhu, Advocate for the appellants.

Mr. Naresh Kaushal, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

CM No.12408-C of 2017

Prayer in this application is for impleadment of the applicant as necessary party in the appeal being the LR of deceased Mahinder Kaur-respondent, who has since died on 11.2.2016.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed just to all exceptions.

Applicant-Rajbir Kaur is ordered to be impleaded as party respondent.

Registry to make necessary amendment in the memo of parties.

CM No.11461-C of 2013

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 242 days in re-filing the appeal is condoned.

RSA No.4240 of 2013

The LRs of plaintiff-Bhupinder Singh/appellant are in second

appeal against the concurrent findings of facts recorded by both the courts below whereby the suit of the plaintiff has been dismissed vide judgment and decree dated 18.7.2011 passed by learned Civil Judge (Jr. Division), Kurukshetra and the appeal filed against the same was met with the same fate by the lower Appellate Court vide judgment and decree dated 27.9.2012.

Brief facts of the case are that the plaintiff-Bhupinder Singh instituted a suit for partition on the premise that the plaintiff and defendants were joint owners in possession of house/killla consisting of many rooms, varandas, samadhi etc as shown in site plan and marked as ABCDEFGHI, situated within abadi deh of village Ajrana Kalan, Tehsil Thanesar, District Kurukshetra; with consequential relief of permanent injunction. It was averred that the plaintiff requested the defendants number of times to get the suit property partitioned but the defendant never paid any heed to his request, which necessitated to file the suit.

Upon notice, the suit was contested by the defendant, inter alia raising objections regarding concealment, valuation, cause of action etc. It was stated that the plaintiff never remained joint owner of the suit property and it was the defendant, who was absolute owner in exclusive possession of the suit property. The plaintiff lost his earlier suit bearing No.591 of 1979 which was decided on 16.5.1980 thus, the present suit was barred under Order 2 Rule 2 CPC.

The trial Court on the pleadings of the parties, framed the following issues:

“1. Whether plaintiff and defendant are joint owners in possession of the house/killla as mentioned in para no.1 of the plaint?OPP

2. Whether the plaintiff is owner to the extent of ½ share of the suit property?OPP

3. If issue no.1 and 2 are proved, whether the plaintiff is entitled for the relief of partition as prayed for as well as for permanent injunction against the defendant?OPP

4. Whether the present suit is based on fraud, forgery and cheating?OPD

5. Whether the suit is barred under Order 2 Rule 2 CPC?OPD

6. Whether the suit is barred under Section 11 CPC?OPD

7. Relief.”

Plaintiff in order to prove his case examined Krishan Pal as PW1, Sukhjeet Singh as PW-2, Mahabir Singh as PW3 and tendered site plan as Ex.P1, special power of attorney (Ex.P.2), copy of jamabandi for the year 1970-71 (Ex.P.3), copy of jamabandi for the year 2005-06 (Ex.P4), copy of certificate of Middle School examination of Bhupinder Singh (Mark A), photo copy of record as Mark B and Certificate dated 28.5.2011 as Mark C.

On the other hand, defendant examined Ramesh Chand as DW-1, Mohinder Kaur as DW-2, Nathi Ram as DW3 and Surjan Ram as DW4. He also brought on record copies of plaint, written statement and order dated 16.5.1980 as Ex.D.1 to D.3 respectively.

On the basis of evidence and other relevant material placed on record, the trial Court dismissed the suit on two counts, namely, (i) the suit for partition in respect of the property situated in abadi deh was not maintainable and (ii) the plaintiff was not resident of Punjab. Appeal filed against the judgment of the trial Court was also dismissed by the lower

Appellate Court with the finding that the plaintiff was not resident of Punjab and the factum of Mahinder Kaur being in possession of the house was not denied.

Learned counsel for the appellants submitted that both the courts below have committed illegality and perversity by not referring to the documentary evidence (Ex.P.3 and Ex.P.4) i.e jamabandis for the year 1970-71 and 2005-06 respectively to show that the plaintiff and the defendant inherited the property of Thakur Singh in equal shares. In fact, defendant has not been able to prove on record that Mahinder Kaur was absolute owner of the property. Once the jointness of the property in question qua agricultural land had duly been proved, the plaintiff was deemed to be owner in possession of half share of the suit property. The findings of both the courts below are not justified and deserve to be set aside. The judgment passed in appeal is reiteration of the fallacy committed by the learned trial Court.

Per contra, learned counsel for the respondent submitted that well reasoned judgments have been passed by both the courts below. The onus was on the plaintiff to prove the joint ownership with regard to the Kila (Palace) as it was separate piece of land and nothing to do with lineage of said Thakur Singh. The defendant is absolute owner in exclusive possession. Even no pedigree table was brought on record by the plaintiff to show that the property was owned by great grand-father.

After hearing learned counsel for the parties and appraising the record of the case minutely, I am of the view that viz-a-viz agricultural land, the jointness of the suit property had been proved in terms of jamabandis Ex.P.3 and P.4. Partition had been sought only with regard to the property situated

in abadi deh. The only issue, which was to be decided by the Courts below is whether the parties were joint owners or not and after determination of the aforesaid question, the court was required to determine the share and pass preliminary decree and in case, the plaintiff fails to prove the joint ownership, his suit would be dismissed. The lower Appellate Court being the last court of law and facts was expected to refer to the oral and documentary evidence available on record but it failed to advert to the same. In my view, the right of statutory appeal of the plaintiff has been taken away as the afore mentioned documentary evidence remained unaddressed. Therefore, it is a fit case where the matter requires to be re-visited by the lower Appellate Court.

Accordingly, the present appeal is allowed. Order dated 27.9.2012 is set aside and the appeal is restored to its original number. Parties through their counsel are directed to appear before the lower Appellate Court on 01.05.2018. It is hoped that the appeal shall be decided as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this order.

March 27, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No