

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

RSA No.2728 of 2016 (O&M)

Date of Decision: 16.07.2018

Inder Singh

... Appellant

Versus

Amar Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Amit Dhawan, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Plaintiff, Inder Singh filed a suit for declaration to the effect that he and defendants are owners in possession of land measuring 18 kanals 17 marlas as detailed in the head note of the plaint situated in the area of Village Dharmiwal, Tehsil Shahkot, District Jalandhar as also one house shown in the red colour in the site plan attached with the plaint and that the decree dated 17.11.1990 in favour of defendant No.1, predecessor of defendants Nos.7 to 11 and in favour of defendant No.6 is null and void and not binding upon the rights of the plaintiff. Further relief of permanent injunction restraining the defendants from interfering in possession and dispossessing the plaintiff forcibly from the land of “his share” was sought.

Plaintiff's suit was dismissed by the trial Court vide judgment dated 04.02.2014. Civil appeal preferred by him has met the same fate vide judgment dated 19.10.2015 passed by the

learned District Judge, Jalandhar.

Resultantly, the plaintiff/appellant is in second appeal before this Court.

Counsel for the appellant has been heard at length.

Entire case set up on behalf of the plaintiff/appellant was that the suit property is ancestral and Joint Hindu Family property and the same after the death of his father Saudagar Singh had fallen to the share of his four sons in equal share and thereby he is owner of 1/4th share of the total suit land measuring 18 kanals 17 marlas. It was also his case that the decree dated 17.11.1990 had been procured by the opposite party i.e. Amar Singh, Surinder Singh and Mahender Singh in collusion with Tirtho (mother of the plaintiff/appellant) and who had no right to suffer such a decree. It was also the case of the plaintiff/appellant that a compromise had been effected with the intervention of the Panchayat wherein it had been decided that property in dispute will devolve equally upon the plaintiff and other legal heirs of Saudagar Singh. Suit was contested and version put forth on behalf of the defendants was that suit property was separate property of Tirtho who had inherited the same from her father Ram Singh and had willingly and freely suffered decree dated 17.11.1990 in favour of Amar Singh, Surinder Singh and Mahender Singh and as such plaintiff had no right in the suit property.

Counsel for the appellant has not been able to rebut the factual premise that no evidence had been led by the plaintiff/appellant to prove that suit property was coparcenary and

Joint Hindu Family property. To the contrary, plaintiff/appellant had not disputed the fact, that suit property was originally under ownership of one Ram Singh and whose inheritance was sanctioned in favour of his legal heirs including mother of the plaintiff/appellant, namely, Tirtho.

Under such circumstances, owner of the suit property, namely, Tirtho had every right to dispose of the same as per her own free will being her separate property. It may be noticed that even though plaintiff/appellant had adduced on record copy of compromise as Ex.P-3 but such document has rightfully been held to be not admissible in evidence being a mere photocopy of the original. Further more such compromise was even beyond the pleadings as plaintiff in his plaint had only adverted to a Panchayati Agreement dated 31.08.1984 and which was never produced on record of this case. The document Ex.P-3 i.e. the alleged compromise bears a different date i.e. 31.05.1990.

This Court would further take notice and as has been conceded by counsel that plaintiff/appellant had himself purchased a part of the suit property measuring 3 kanals 3 marlas from his brothers Amar Singh and Surinder Singh after passing of the decree dated 17.11.1990 and thereby had admitted the aforesaid Amar Singh and Surinder Singh to be owners of the suit property. In other words, plaintiff/appellant was well aware of the decree in question dated 17.11.1990 and had accepted the same to be correct as he had purchased a part of the suit property measuring 3 kanals 3 marlas subsequent thereto.

The Courts below have duly appreciated the evidence in the form of jamabandi Ex.P-4 which reveals that the plaintiff and defendants were co-sharers in joint possession of the suit property and as such a co-sharer could not seek an injunction against other co-sharers except by proving that he is in exclusive possession of a certain parcel of the suit property.

In the considered view of this Court, the judgments passed by the Courts below are well reasoned and based on due appreciation of evidence.

No interference in the same is warranted.

The instant appeal does not raise any question of law much less substantial question of law.

Appeal is dismissed.

Since the main appeal itself has been decided, pending application(s), if any, shall also stand disposed of.

16.07.2018	(TEJINDER SINGH DHINDSA)
vandana	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	No