

RSA No. 3263 of 2016 (O&M)

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

**RSA No. 3263 of 2016 (O&M)
Date of decision: 14.5.2018**

Dalwanti and another

... Appellants

Versus

Omparkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. J.P. Sharma, Advocate
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellants-plaintiffs was decreed by the trial court, vide judgment and decree dated 18.12.2012. But, as the appeal preferred against the said decree was allowed by the appellate court and the suit was dismissed, the appellants-plaintiffs are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs claimed a decree for injunction, restraining the defendants from taking forcible possession and raising construction over a plot comprised in rectangle No.96, killa No. 26 (1-1), situated in village Budoli, Tehsil and District Rewari. And, in the event, the oral partition between the parties is not proved, the plot in dispute, as described in paragraph 2 of the plaint, may kindly be partitioned and possession thereof be delivered to the plaintiffs.

Briefly, the case set out by the plaintiffs was that the parties happened to be the members of a Joint Hindu Family, and were owners in possession of the plots comprised in rectangle 96, killa No. 26 (1-1), khasra

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No. 563/1 (0-19), 564 (1-1) and 566 (0-19), situated at village Burdoli, Tehsil and District Rewari, as co-sharers to the extent of their respective shares. Pursuant to an oral and mutual partition in the year 1995, a plot comprised in khasra No. 564 had fallen to the share of defendant No.1, a plot comprised in khasra No. 565 was allotted to defendants No. 2 to 4, a plot comprised in khasra No. 563/1 was allotted to defendant No.5, and plot comprised in killa No. 26 had fallen to the share of the plaintiffs. Resultantly, the parties constructed their respective sites. Post death of Sumer Singh, predecessor-in-interest of the plaintiffs, the plaintiffs continued to be owners in possession of the plot comprised in killa No.26 and had stored stones, fuels etc, at site. But, as the defendants threatened to forcibly dispossess the plaintiffs, thus the suit.

In the written statement filed on behalf of defendants No. 2 to 5, it was pleaded that the site plan, appended with the plaint, showed that a residential house in the abadi had fallen to the share of the plaintiffs, pursuant to a family settlement in the year 1966, and defendants No. 1 to 5 were in possession of the plots Nos. 563/1, 564 and 566, on the basis of the family settlement. In this manner, the house in the abadi was given to the plaintiffs and its worth at the time of partition was Rs. 1,00,000/-. Whereas, defendants No. 1 to 5 were only allotted the plots, upon which they subsequently raised construction with their own funds. Therefore, there was nothing left among the parties to share.

On a consideration of the matter in issue, the trial court reached a conclusion that plaintiffs happened to be the co-sharers in the property mentioned in para 2 of the plaint, and were, thus, entitled to seek partition by metes and bounds. The defendants were accordingly restrained from causing

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any interference in the possession of the plaintiffs or raising any construction over the suit property, i.e. rectangle No. 96, killa No. 26, except by following due course of law.

However, on an analysis of the matter in issue and the evidence on record, the appellate court concluded that the trial court, in para 37 in its judgment, had observed that partition had taken place in the year 1966, and therefore, the suit property including the plot comprised in killa No. 26 were joint along with the residential property. And, that defendants had 1/4th share and were entitled to seek partition. Thus, issue Nos. 1, 2 and 3 were accordingly decided in favour of the plaintiffs and against the defendants. Further, although the trial court had observed that the defendants, in their written statement, had admitted that rectangle No. 96, killa No. 26 had fallen to the share of the plaintiffs, but there was no such admission of the defendants in their written statement. In fact, the case set out by the defendants was that a residential house, situated in the abadi, was allotted to the plaintiffs in lieu of their share in the mutual settlement that was arrived at in the year 1966, and the plot comprised in killa No. 26 was a joint property of the parties. Therefore, the findings recorded by the trial court as regards issue Nos. 2 and 3 were erroneous. Further, the plot bearing rectangle No.96, killa No. 26, was not a constructed site, and in fact, was a vacant piece of land. Therefore, by merely keeping their articles such as fuel, bitora, stones etc., the plaintiffs could not claim to be in settled and exclusive possession thereof. Hence, the plaintiffs were not entitled to a decree for injunction against the defendants, who proved to be the co-sharers in the suit property, and the only remedy the plaintiffs could avail was to seek partition. Although, the plaintiffs had even sought a decree for partition

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in the alternative, but for they failed to include the entire constructed properties, suit for partial partition of the properties was not maintainable. Further, as per jamabandi (Ex.P3), even other gair mumkin properties of the parties were still joint, which too had not been included, therefore, the suit of the plaintiffs was bad even on account of partial partition. Accordingly, the decree rendered by the trial court was set aside.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion arrived at by the first appellate court was either contrary to the record or suffered from any material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

14.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO