

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

RSA No. 4680 of 2016 (O & M)

Date of Decision:-10.01.2018

Vinod Kumar and others

...Appellants

Versus

Sat Parkash and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Singal, Advocate
for the appellants.

AMIT RAWAL J.

The defendant is in appeal against the judgment and decree rendered by the lower Appellate Court whereby suit seeking possession by partition though was dismissed by the trial Court but has been decreed by the lower Appellate Court.

Counsel for the appellants-defendants has submitted that the plaintiff instituted a suit aforementioned i.e. for possession by way of partition on the premise that plaintiff and defendants constructed the house and are residing in the abovesaid property. The plaintiff had been living in the house marked by letters CDEB and AIJK and a passage of 3 feet wide marked by letters ABF shown in blue colour whereas the defendants are living in the property marked by letters GCAB and first floor shown in red colour. The Khata was joint. In this background the partition was sought

as both were claiming half share each. In other words it was submitted that after death of Puran Chand, father of the plaintiff and defendants No.1 to 5, father-in-law of defendant No.6 and grandfather of defendants No.7 to 13 inherited $1/3^{\text{rd}}$ share in equal share, thus, plaintiff and defendants were owners in possession of suit property to the extent of half share each i.e. half share of plaintiff and half share of defendants No.1 to 13. The stand of the appellant-defendant before the trial Court was that the suit was not maintainable as both the parties had been living separately in their own houses since long as the property had already been partitioned orally, though it was not reflected in revenue record as there is no prohibition to the same. The suit was filed with a malafide and deliberate intention. The defendants raised the construction for the residential purpose and have been enjoying the same peacefully despite the fact that the plaintiff had the knowledge about the same. The trial Court rightly dismissed the suit holding that plaintiff failed to prove the site plan Ex.P4 and had not placed on record any material to show that the parties to the suit were joint owners but the lower Appellate Court committed perversity by reversing the well reasoned finding on the premise that sale deed dated 14.10.1995 Ex.P1, translation copy of which is Ex.P1/A placed on record revealed the joint ownership of the parties. The sale deed had not been proved in accordance with law. The lower Appellate Court failed to consider the admission of the partition by the plaintiff during the cross-examination, therefore, the suit was liable to be dismissed as it was based on the falsehood.

I have heard learned counsel for the appellants and perused the

case file.

In my view the trial Court while dismissing the suit had not adverted to the sale deed Ex.P1 *ibid* and had only confined to the document while returning the finding. For the sake of brevity, para 11 of the judgment of the trial Court read as under :-

“11. After having heard the respective contentions of the parties as well as having perused the case file, this Court is of the considered view that plaintiff has failed to prove his case as it was incumbent upon the plaintiff to prove that the plot/goddown in question came to the share of the parties to the suit but the plaintiff has not even bothered to prove the site plan Exhibit P4. Moreover, the plaintiff has not placed on file any document showing that the parties to the suit are joint owners of the suit plot/goddown. Further, the plaintiff says that he is living in the house marked by letters CDEB and AUK but no such document has been placed on file to establish the said factum and even there is no specific number as to in which house he is alleged to have been residing. Merely placing on file site plan without being proved is not proof of ownership. Furthermore, copy of assessment register placed on file are not the proof of ownership that the parties to the suit are co-sharers of the plot/goddown in question. Hence, in the absence of any evidence, Court can not pass the decree for partition by meets and bounds as no document showing the co-sharersship of the parties to the suit has been placed on file. Merely because defendants admit some of the claim does not wriggle out plaintiff to prove his case. In view of the foregoing

discussion, issue No.1 stands decided against the plaintiff.”

Whereas the lower Appellate Court in paragraph 13 adverted to the sale deed. No contrary evidence has been placed on record on behalf of the defendants to belie the contents of the sale deed. On perusal of the statement of DW2 it is discernible that according to him partition was effected but in cross-examination admitted that the partition was not effected in his presence. No doubt the oral partition is permissible but it has to be proved either through implication or by conduct. None of the aforementioned ingredients have been proved. The revenue record reveals the joint ownership of the property. In case the partition had effected, it was incumbent upon the defendants to produce on record that after the oral partition both the parties enjoyed the possession of portion having more or less a value in the market. In the absence of the same it cannot be deciphered as to the property fallen in the possession of the defendants had more potential and value or not. Even the assessment register for the year 1990-91 (Ex.P2) and for the year 2001-02 (Ex.P3) produced on record shown to be of one unit. All these factors struck in the mind of the lower Appellate Court to form an opinion that the suit property was not partitioned. Ex.D1 relied upon by the defendants had been negated by the lower Appellate Court on the ground that the alleged family settlement was not registered and insufficiently stamped. The finding rendered by the lower Appellate Court being the last Court of fact and law in my view is the correct appreciation of the evidence brought on record, which cannot be

said to be perverse. As no question of law arises for determination, the present appeal stands dismissed.

January 10, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

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