

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

RSA No.3934 of 2015 (O&M)

Date of decision:13.03.2018

Harish

... Appellant

Vs.

Ashwani Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gagandeep Singh Sirphikhi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant no.1 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for possession by way of partition with consequential relief, had been dismissed by the trial Court and upheld by the Lower Appellate Court.

The respondent-plaintiffs instituted a suit for partition by metes and bounds of the house bearing No.B-XVIII-220 marked as 'ABCDEF' as per the site plan situated in Puranian Mohalla, Batala on the premise that house belonged to Puran Devi widow of Jagannath, who died in the year 1982 and left behind three sons, namely, Kharaiti Lal, Madan Lal and Mohan Lal and two daughters namely Santosh and Kanta Devi. Kharaiti Lal son of Puran Devi died leaving behind plaintiffs no.1 to 6 and Madan Lal son of Puran Devi died leaving behind defendant as his only legal heir and Mohan Lal died issueless and wife of said Mohan died prior to the death of

Mohan Lal, so the share left behind by said Mohan devolved upon plaintiffs and defendant in equal share, therefore, the plaintiffs and defendant became the owners to the extent of 1/4th share each.

The aforementioned suit was contested by the defendants by denying the contents of the plaint. Defendants No.2 to 4 in their joint written statement admitted the relationship of the parties and stated that plaintiffs had no legal right over the house in question, but defendants No.1 to 4 were joint owners to the extent of 1/5th share. The possession of plaintiffs qua suit property was denied as they were stated to be living in Amritsar since 1982. Mohan Lal during his life time transferred his share in favour of Madan Lal for a total sale consideration of ₹2250/- which was reduced into writing. Replication was filed denying the contents of the written statement by reiterating to the facts mentioned in the plaint.

The trial Court on the basis of the pleadings framed the following issues:-

- “1. Whether plaintiffs are entitled for possession as prayed for? OPP*
- 2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
- 3. Relief.”*

Both the parties examined the witnesses at their end. The trial Court on the basis of documentary evidence, i.e. title, decreed the suit on 16.11.2012 but erroneously passed the injunction and did not pass

preliminary decree. The appellant-defendants filed civil appeal bearing no.143 of 2012 on 20.12.2012 which was dismissed, vide judgment and decree dated 08.01.2015. During the pendency of appeal, trial Court passed a preliminary decree dated 01.03.2013.

Mr. Gagandeep Singh Sirphikhi, learned counsel for the appellant submitted that appellant has been deprived of right to challenge or amend the grounds of appeal vis-a-vis decree dated 01.03.2013 as the appeal was filed against the un-amended decree. The decision rendered by the Appellate Court is of 08.01.2015, therefore, the matter requires re-consideration. Both the Courts below have misread the documentary evidence on record, i.e., partition dated 10.09.1982 (Ex.D1), therefore, the suit was not maintainable, thus, there is illegality and perversity in the judgments and decrees under challenge.

I have heard the learned counsel for the appellant, appraised the impugned judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions.

No doubt, the trial Court was required to pass a preliminary decree with regard to partition but not confined the same vis-a-vis injunction, for, suit was decreed in toto, therefore, there was a defect in the judgment and decree dated 01.03.2013.

The pith and substance of the grounds of appeal taken before the Lower Appellate Court was only on the partition proceedings and not with regard to injunction, for, genesis was on account of alleged partition Ex.D1, which has not been proved in accordance with law. The revenue

record showed that both the parties had share on the demise of their predecessor-in-interest as necessary corollary is to seek possession by way of partition which has been done, so when the Court found defect in the decree corrected the same on 01.03.2013. It is settled law that act of Court prejudices none, thus, correction of decree was not fatal vis-a-vis appellant-defendant no.1.

As an upshot of my findings, there is no illegality and perversity in the judgments and decrees of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 13, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No