

**C.M.No.3886-C of 2018 in/and
RSA No.538 of 2016**

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

**C.M.No.3886-C of 2018 in/and
RSA No.538 of 2016
Date of decision:19.03.2018**

Jasbir Singh

... Appellant

Vs.

Surjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Arora, Advocate
for the applicant/appellant.

AMIT RAWAL J. (Oral)

C.M.No.3886-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated 09.02.2018 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

RSA No.538 of 2016

The appellant-defendant is in Regular Second Appeal against the judgments and decrees of both the Courts below, whereby, preliminary decree in respect of suit property of Jagat Singh, father of the parties, who died intestate has been passed.

Respondent-plaintiffs instituted a suit claiming relief mentioned in the head note of the plaint on the premise that Jagat Singh died

intestate and property described in the plaint was joint at the hands of all the co-sharers.

The appellant-defendant appeared and filed a counter claim stating therein that one property had been omitted, therefore, the suit was bad for partial partition.

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

“1. Whether property in dispute is joint between the parties?

OPP

2. Whether the plaintiffs have 6/7th share in the entire property in dispute? OPP

3. Whether the plaintiffs are entitled to separate possession by way of partition of the suit property in dispute? OPP

4. Whether the plaintiffs have not come to the Court with clean hands? OPD

5. Whether the suit is bad for non joinder of the necessary parties? OPD

6. Whether the suit is bad for partial partition? OPD

7. Whether the Court has got no jurisdiction to entertain and try the present suit? OPD

8. Relief.”

Both the parties examined the following witnesses:-

1. PW1 - Gurdip Singh

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|-----|------|---|-------------------------------|
| 2. | PW2 | - | Kehar Singh |
| 3. | PW3 | — | Parminder Singh |
| 4. | PW4 | - | Prem Nath |
| 5. | PW5 | - | Prem Singh son of Harnam Dass |
| 6. | PW6 | - | Sukhram |
| 7. | PW7 | - | Gurbaksh Singh |
| 8. | PW8 | - | Raj Kumar |
| 9. | PW9 | - | Madan Singh |
| 10. | PW10 | - | Sodhi Lal |
| 11. | PW11 | - | Kuldip Singh |
| 12. | PW12 | - | Arjan Khanna Draftsman |
| 13. | PW13 | - | plaintiff no.1 himself. |

Defendant

- | | | | |
|-----|------|---|---------------------------------|
| 1. | DW1 | - | Tarsem Lal |
| 2. | DW2 | - | Mohan Lal |
| 3. | DW3 | - | Moti Ram |
| 4. | DW4 | - | defendant Jasbir Singh himself. |
| 5. | DW5 | - | Tarsem Singh |
| 6. | DW6 | - | Yashdev |
| 7. | DW7 | - | Kirpal Singh |
| 8. | DW8 | - | Sarwan Ram |
| 9. | DW9 | - | Dev Raj |
| 10. | DW11 | - | Mohan Singh |

- 11. DW12 - Jasbir Singh
- 12. DW13 - Raj Kumar
- 13. DW15 - Bishan Singh

On the preponderance of evidence, the trial Court decreed the suit by holding that defendant had admitted the pleadings of the plaintiffs and accorded 6/7th share to all the persons, i.e., parties to the lis by passing a preliminary decree. The appeal preferred before the Lower Appellate Court also met with the same fate.

Mr. Sandeep Arora, learned counsel appearing on behalf of the appellant-defendant submitted that both the Courts below abdicated in drawing the preliminary decree as possession has not been kept intact. In fact, possession over the rooms shown in yellow colour in the site plan 'D' was of Gian Kaur and her son Satnam Singh, whereas, remaining rooms shown in red colour were in possession of the appellant-defendant and rooms shown in blue colour were in possession of Balbir Singh. The appellant-defendant claimed ownership of the entire moveable assets by denying the jointness of the property but the Courts below abdicated in not noticing the aforementioned fact. In fact, plaintiff No.3-Balbir Singh was a Government employee in Polytechnic Hoshiarpur and appellant-defendant was aged about 40 years at the time of filing of written statement and was running a Flour Mill for the last more than 20 years in village Phulahi, Hoshiarpur. The property had been created from the income generated by the appellant, therefore, it would not be said to be joint.

I have heard the learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below.

The factum of property being joint at the hands of the parties has not been denied, rather admitted and this fact had been noticed by the trial Court in paragraph 6 of the judgment which has not been controverted by the counsel. Paragraph 6 of the judgment reads thus:-

“6. It has again been argued by the learned counsel for the defendant that the plaintiff has not produced any documentary evidence to show their possession and running of business. As has been discussed above that in a suit for partition, the possession is not required to be proved. Only thing that is required to be proved by the plaintiff is that the property in dispute is join in nature and on the basis of natural succession, the plaintiffs are entitled to 6/7th share in the entire property in dispute. It makes no difference whether the electricity connection is in the name of of the plaintiff or the defendant. It is also irrelevant as to who is paying chullah tax, the property tax or other taxes. In the facts and circumstances mentioned, it will be a futile exercise if the court discusses the oral evidence led by both the parties when in the pleadings itself the case is admitted by the defendant. The jointness of the property in dispute is not disputed by the defendant as is evident from his written statement as well as counter claim filed by him. All the

legal heirs of deceased Jagat Singh are party to the suit and hence the entire estate of Jagat Singh as detailed and described in the head note of the plaint is to be partitioned among his legal heirs in equal shares. Therefore, the share of the plaintiffs in the entire estate of Shri Jagat Singh come to 6/7th.

As regards maintaining of the possession intact, it would be the domain of the Executing Court in a petition while drawing the preliminary decree. This Court specifically raised a query to Mr. Arora regarding pendency of the proceedings for drawing the preliminary decree, it was apprised that objection with regard to same was already pending adjudication. During the course of arguments, he also raised a plea that certain properties were in possession of 'gair marusi'.

I am afraid that aforementioned argument would not be able to cut ice, for, appeal is not at the hands of 'gair marusi' and status of gair marusi is always of the same and in case, it is so, no evidence has been brought on record to support the aforementioned argument.

Be that as it may, fact of the matter is that appellant-defendant has already availed the remedy by raising objections to drawing of the final decree. I am of the view that there is no illegality and perversity in the judgments rendered by both the Courts below determining the share of the parties to the extent of 6/7th ordering the partition by metes and bounds, 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.

March 19, 2018
savita

(AMIT RAWAL)
JUDGE

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