

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

RSA No.411 of 2015 (O & M)
Date of Decision:12.03.2018

Rachhpal Kaur and others

...Appellants

Versus

Patwant Singh Reyar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K. Jain, Advocate
for the appellants.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for partition and damages/mesne profit. Plaintiff claims that he is entitled to 8/14th share in the suit property and also entitled to damages/mesne profit at the rate of Rs.10,000/- per month for the last 3 years i.e. Rs.3,60,000/-. Plaintiff has pleaded that the property in dispute was jointly purchased by the plaintiff and his father-Ranjit Singh vide sale deed dated 30.03.1968. He has further submitted that the father has died and since the plaintiff was already owner of half share, on the death of his father, he also inherited, on the basis of natural succession 1/14th share of property as the father had left behind 7 legal heirs. Thus, the plaintiff has claimed that he is entitled to 8/14th share.

Defendants No.1 to 5 contested the suit and pleaded that no doubt the name of the plaintiff is mentioned in the sale deed, however, he

therefore, the suit is not maintainable. It was further pleaded that the suit property has already been partitioned and the plaintiff is in possession of his share.

After appreciating the evidence available on the file, learned trial Court decreed the suit after returning a finding that the plaintiff is entitled to 8/14th share in the house in question while defendants No.1, 2, 3, 6 and 7 are entitled to 1/14th share each, whereas defendants No.4 and 5 are entitled to 1/28th share each.

First appeal preferred by the defendant-appellant was dismissed, after re-appreciating the evidence available on the file.

Learned counsel for the appellants has made following submissions:-

(i) plaintiff has failed to prove that he had invested any amount or contributed any amount towards the sale consideration. Hence, he was not the owner of half share of the property.

(ii) from the reading of the sale deed, it is not proved that the plaintiff was owner of half share. In the sale deed, it has been mentioned as the plaintiff along with his father has jointly purchased the property. He submits that the finding of the Courts below that the plaintiff is owner to the extent of half share is erroneous.

(iii) He has further submitted that the property has already been partitioned and, therefore, no fresh application is maintainable.

(iv) He has further submitted that the plaintiff is estopped from claiming separate possession of the property once parties are admittedly in settled possession of their respective share and having separate Electricity

With the assistance of learned counsel for the appellants, this Court has gone through the judgments passed by the Courts below and the evidence produced.

A reading of the sale deed dated 30.03.1968 proves that Ranjit Singh Reyar and Patwant Singh Reyar father and son had purchased the property jointly. In the sale deed, share inter se between the two joint owners have not been defined. Hence, both the Courts have rightly concluded that in the absence of any specified share, the share inter se between two owners would be equal. This Court does not find any error in the view taken by the learned Courts below.

Learned counsel for the appellants laid much stress on the fact that no evidence has been produced on file to prove that the plaintiff had contributed in the consideration paid under the sale deed. Learned counsel has referred to oral evidence to prove that the father had taken some loan for payment of the sale consideration. In the considered opinion of this Court, the argument of learned counsel would not improve the case of the appellants. Sale deed is a document of title. Sale deed proves that father and son are joint owners. Further various documents have been proved on file proving that the plaintiff-Patwant Singh Reyar and deceased-Ranjit Singh Reyar had jointly applied for transfer of the plot by furnishing joint affidavit and executed mortgage deed jointly, which are Ex.P-3 to P-8. Merely because the plaintiff has failed to prove his contribution at the time of purchase in absolute terms would not divest the plaintiff from his ownership with respect to half share of the property. Learned counsel for the appellants while referring to Section 4 of the Prohibition of Benami

fudiciary relationship with the father and also in fudiciary relationship with the defendants and, therefore, the plaintiff cannot be held to be owner to the extent of 8/14th share. Section 4 of the Prohibition of Benami Property Transaction Act, 1988 only provides that if a person is in a fudiciary capacity, the property held for the benefit of another person would not be hit by Section 4. Learned counsel has relied upon a judgment passed by the Hon'ble Supreme Court in **“Sri Marcel Martins vs. M. Printer and others”** (2012) 5 SCC 342 to assert that if the property is purchased in the name of one member, whereas contribution of the sale consideration was made by 5 members, then all would be owner.

In the present case, this is not the position. Predecessor of the parties never claimed that the plaintiff was a benami holder. Documentary evidence produced on file proved that the plaintiff was always treated as a joint owner of half share. No evidence has been led by the defendants to prove that they contributed any amount towards the sale consideration. Such being the position, argument of learned counsel cannot be accepted. Be significant to note that before the learned First Appellate Court the point of parties being in fudiciary relationship was not even raised.

Learned counsel for the appellants vehemently argued that the property has already been partitioned and, therefore, the suit for partition is not maintainable. Learned counsel has read Para 7 of the plaint to assert that the partition should be inferred because the plaintiff has pleaded that the plaintiff is in occupation of a very small portion of the house. He has further referred to pleadings in Para 6 of the plaint to assert that all family members are in separate individual possession of the property.

It is not in dispute that no partition of the property by metes and

bounds is proved. In the record of the Chandigarh Administration, property continuous to be joint between the parties. Merely because the parties are in possession of separate portion inference cannot be drawn that the parties have already partitioned the property.

In last, learned counsel has submitted that the plaintiff is estopped from filing the suit, as the suit for partition has been filed in the year 2009, whereas Ranjit Singh Reyar predecessor-in-interest of the parties died in the year 1990. Once all the parties are co-sharers/co-owners, suit for partition cannot be held to be time barred on the ground that one of the co-owner had died in the year 1990. Whenever, one of the co-owner pleads cause of action seeking the partition and the other co-sharers refused to partition the property, a suit for partition can be filed. Defendant, who are also co-owners cannot oppose the suit on the ground of estoppel.

Learned trial Court has already held that order of partition would be subject to the rules framed by Chandigarh Administration.

In view of the above discussion, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Regular second appeal is dismissed.

12.03.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

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