

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No. 15 of 2016 (O/M)
Date of decision : 15.5.2018

Sh. Bhupinder Singh Toki

..... Appellant

Versus

Amrinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Divanshu Jain, Advocate,
for appellant.

Mr. Gunjan Rishi, Advocate,
for respondent No. 1.

Mr. Dushyant Jaharan, Advocate,
for respondent No. 2.

None for respondents No. 3 to 6.

Mr. Gaurav Tangri, Advocate,
for respondent No. 5.

Mr. Ankur Sharma, Advocate,
for respondent No. 8.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J.

Impugned in present second appeal against order is judgment dated 11.12.2015, passed by learned Additional District Judge, Chandigarh, whereby after allowing application filed by Kashmir Singh son of Santokh Singh under Order I Rule 10 CPC, 1908, for impleading him as party, case was remanded back with a direction to trial Court to decide the matter afresh after giving opportunity to Kashmir Singh to file written statement as well as to lead evidence. Earlier, the learned Civil Judge (Junior Division), Chandigarh, in a suit for partition by way of possession and rendition of

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accounts, had dismissed suit of plaintiffs, while recording finding on issue No. 3 only regarding maintainability of suit. Trial Court did not record finding on issues No. 1, 2.

Brief facts of case are that plaintiffs have filed a suit for partition by way of possession of House No. 162, Sector-19-A, Chandigarh. It was stated that plaintiffs have been residing abroad and defendant No. 1 has been managing affairs of house. He had been collecting rent from defendants No. 2 to 4. Plaintiffs had requested defendant No. 1 several times to render accounts of rent received, but he did not do so. Plaintiffs No. 1 to 3 have sold their 3/4th share to plaintiff No. 4. Now, they seek partition of property.

Defendant No. 1 on appearance took objection that he and plaintiffs No. 1 to 3 are owner of properties of Kothi No. 705-C, Phase-VI, Mohali, SAS Nagar, Mohali; Industrial Shed No. 136-140/95, Industrial Area, Phase-1, Chandigarh; agricultural land measuring 3 ½ acres bearing khasra No. 24//9/3; 12; 13; 18, situated at village Lohgarh, District Patiala, and House No. 162, Sector-19-A, Chandigarh. It was stated that defendant No. 1 and plaintiffs No. 1 and 2 are sons of late Shri G.S. Toki and plaintiff No. 3 is wife of Shri G.S. Toki. After death of G.S. Toki, plaintiffs No. 1 to 3 and defendant No. 1 are entitled to all the properties. Plaintiffs No. 1 to 3 have sold their share in property in question to plaintiff No. 4 and plaintiff No. 4 has sold 30% share to Kashmir Singh son of Santokh Singh Singh.

Defendant No. 2 pleaded that he is tenant since 1997 on first floor and garage on ground floor at the rate of Rs. 6,000/- per month including water charges. It was stated that earlier the rent was Rs. 5,000/-

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per month including water charges. He is ready to tender the rent as per directions of Court.

Defendant No. 3 also filed separate written statement stating that he is regularly paying rent to defendant No. 1.

Defendant No. 4 in separate written statement stated that defendant No. 3 might have taken said accommodation in her personal capacity and not as an employee of defendant No. 4.

From pleadings, following issues were framed :-

1. Whether the plaintiffs are entitled to the decree of partition by way of possession by metes and bounds ? OPP
2. Whether the plaintiffs are entitled to the decree for rendition of accounts ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the plaintiffs have not approached this Court with clean hands ? OPD
5. Whether the suit for rendition of account is barred by limitation ? OPD
6. Whether the defendant No. 1 is entitled to counter claim as prayed for ? OPD
7. Relief.

Trial Court took up issue No. 3 only and noticed that plaintiffs No. 1 to 3 have sold their 3/4th share in suit property to plaintiff No. 4 and plaintiff No. 4 in turn sold 30% share out of 3/4th share to one Kashmir Singh, who was not made party. It was stated that now plaintiff No. 4 has stepped into shoes of of plaintiffs No. 1 to 3. The ownership of parties is proved. The sale of 30% share to Kashmir Singh, by plaintiff No. 4,

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vide registered sale deed dated 21.6.2013, is also proved. Therefore, it was held that without presence of Kashmir Singh, matter cannot be decided. Issues No. 1 and 2 and were left as redundant. Issues No. 4, 5, 6 were not pressed by defendants and consequently, suit was dismissed.

I have heard learned counsels for parties and have also carefully gone through file.

It comes out from order of lower appellate Court that on an application of Kashmir Singh son of Santokh Singh to become party in the suit, he has been allowed by lower appellate Court to become party. Before the lower appellate Court, Kashmir Singh states that he does not want to remain co-sharer, meaning thereby that he is also seeking partition. That would mean that defendant No. 4 who was holder of 3/4th (75% share) in disputed Kothi No. 162, Sector-19-A, Chandigarh, has sold 30% share out said 75% to Kashmir Singh. In this way, plaintiff No. 4 is left with 45% share, Kashmir Singh has 30% share and defendant No. 1 is left with 25% share. There is no difficulty about determination of share which was to be determined in preliminary decree. However, defendant No. 1 has taken another objection that suit is for partial partition. In the suit, plaintiffs have also prayed for rendition of accounts. Issues No. 1 and 2 were left undecided. Therefore, findings on issues No. 1 and 2 have to be recorded by trial Court.

In view of matter, there is no force in present appeal. Consequently, second appeal against order is dismissed. The learned Civil Judge (Junior Division), Chandigarh, is directed to rehear the parties. Considering that Kashmir Singh is now also one of parties, take his written statement, if he so desires, determine his share and decide issues No. 1

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and 2 by passing a speaking order within six months from the date of receipt of certified copy of this order. Both parties are directed to appear before the successor Court of Shri Pardeep Synghal, PCS, learned Civil Judge (Junior Division), Chandigarh, on 23.5.2018 at 10:00 AM. Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

15.5.2018

sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No