

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

RSA No. 1344 of 2017 (O&M)

Date of decision : September 07, 2018

Raj Pal

.....Appellant

Versus

Dr. Ram Murti and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Dinarpur, Advocate
for the appellant.

LISA GILL, J.

Appellant – plaintiff is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Junior Division), Gurgaon vide judgment and decree dated 12.01.2016 passed by the learned Civil Judge (Junior Division), Ambala and judgment and decree dated 09.12.2016 passed by the learned Additional District Judge, Ambala and consequential dismissal of his suit.

Appellant – plaintiff filed a suit for possession by way of partition in respect of property No. 4011, Cross Road No. 9, Palledar Mohalla, Ambala Cantt and property No. 3812, Pul Chameli, Ambala Cantt. by metes and bounds. He claimed exclusive possession of the suit property to the extent of 1/6th share. It was pleaded that the plaintiff is the real brother of defendant – respondents No. 1, 3 to 5 and maternal uncle of defendant – respondent No. 2. The plaintiff's grand father namely Vaid Luxmi Dutt was averred to have purchased the property No. 4010 from the Assistant Settlement Commissioner (Custodian), Jalandhar on 01.11.1954 in lieu of the properties left in Pakistan. Registration was done in respect to property

No. 4010 on 02.08.1957. Property No. 4011 was purchased vide sale deed dated 14.05.1959 and property No. 3812 was also purchased. Vaid Luxmi Dutt executed will dated 20.05.1975 in favour of his heirs. It is further pleaded that the plaintiff's father executed a registered will No. 49 dated 27.05.2005 qua his share. The plaintiff's mother died in the year 2010 and his father on 17.12.2009. The plaintiff as well as the defendants were the only legal heirs. It was pleaded that the plaintiff had requested the defendants for partition of the property as he wanted separate possession of his share but to no avail. Respondent – defendant No. 1 was stated to have served a false notice dated 11.02.2010 which was duly replied to, by the plaintiff on 02.07.2010. Earlier civil Suit No. 91/10.06.2011 was filed against the respondent – defendants but the same was withdrawn on 23.12.2011 by the plaintiff on an assurance and promise held forth by the defendants. However, the respondent did not honour his commitment, therefore, the present suit was filed.

Defendant – respondent No. 1 resisted the suit. Written statement was filed taking various preliminary objections. Averments on merits were controverted. It was stated that property bearing No. 4011 and 3812 was originally owned by Dr. Basheshar Nath son of Vaid Luxmi Dutt, who executed will dated 27.05.2005 and bequeathed the property No. 3812 in favour of respondent No. 1. Property No. 4010 and 4011 was bequeathed in favour of the plaintiff and respondent No. 1 in equal shares. Dr. Basheshar Nath their father executed release deed dated 28.05.2005 registered at serial No. 407 dated 30.05.2007 and transferred property No. 4011 in favour of respondent No. 1. Another release deed of even date i.e. 28.05.2007 was registered at serial No. 408 on 30.05.2007 and property No.

3812 was transferred in favour of respondent No. 1. Mutation in this respect was also sanctioned in favour of respondent No. 1. Thus, it was contended that respondent No. 1 became the owner in possession of the properties No. 4011 and 3812 in the life time of their father Dr. Basheshar Nath. Property bearing No. 4010, Cross road No. 9, Palledar Mohalla, Ambala Cantt. is joint property of the plaintiff – respondent No. 1. Both of them being owners to the extent of half share each. Dismissal of the suit was, thus, prayed for.

None appeared on behalf of respondents – defendants No. 3 to 5. They were proceeded exparte on 18.04.2012 before the learned trial Court. After filing of the written statement on behalf of respondent – defendant No. 1, the said defendant as well as respondent No. 2 were proceeded exparte on 07.07.2015. Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the plaintiff is entitled to partition of the suit property as prayed for?OPP.
- ii)Whether the suit is not maintainable in the present form?OPD
- iii)Whether the suit is bad for misjoinder of parties? OPD.
- iv)Whether the suit is time barred? OPD.
- v) Whether the plaintiff has no locus standi to file the present suit?OPD
- vi)Whether the plaintiff has not affixed proper court fee?OPD
- vii)Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case concluded that the plaintiff had failed to prove his case. Merely because the evidence is un rebutted and unchallenged does not prove his

case. Therefore, the suit was dismissed.

Appeal filed by the appellants was also dismissed by the learned Additional District Judge, Ambala vide judgment and decree dated 09.12.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiff. It is submitted that once the entire evidence led by the appellant – plaintiff was unrebutted, learned courts below should have decreed the suit without demure. It is, thus, prayed that this appeal be allowed and impugned judgment and decree dated 12.01.2016 passed by the learned Civil Judge (Junior Division), Ambala and judgment and decree dated 09.12.2016 passed by the learned Additional District Judge, Ambala be set aside and suit filed by the appellant be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his able assistance.

Learned trial Court declined the relief to the appellant – plaintiff while observing as under:-

“ Firstly, the title of Late Sh. Basheshar Nath over the suit property has not been proved even on the basis of preponderance of probabilities. There is no document as to exclusive title over the suit property.

Secondly though the plaintiff has sought relief for partition in 1/6th share, however, there is nothing on case file to show that except above mentioned parties (plaintiff as well as defendants) there is no other legal heir having interest in the suit property.

Thirdly, the copy of will of the deceased Basheshar Nath is pertaining to the suit property 4810-11 which is different from the number of suit property thus, the same cannot be relied upon.

Fourthly, the careful perusal of testimonies as well as documentary evidence shows that the plaintiff has failed to prove his pleadings. Mere evidence has gone un rebutted and unchallenged does not prove the case of plaintiff.”

It is relevant to note at this stage that there is no denial of the fact that release deed dated 28.05.2005 registered at serial No. 407 dated 30.05.2007 and release deed dated 28.05.2007 registered at serial No. 408 on 30.05.2007 in respect to the property in question as well as property No. 3812 were executed by the father of the plaintiff and defendant – respondent No. 1 during his lifetime. It is not the case of the appellant – plaintiff that the release deeds were never executed by his father. The said release deeds were never challenged by the plaintiff during the life time of his father. Dr. Basheshar Nath is stated to have died on 17.12.2009. It is, thus, rightly held that it is not established on record that Dr. Basheshar Nath was even the owner of the property on the date of his death i.e. 17.12.2009. Furthermore, the the appellant – plaintiff had earlier instituted Civil Suit No. 91 which was withdrawn by him. It is rightly held by the learned courts below that the plaintiff did not place on record either a copy of the plaint nor order dated 23.12.2011 showing the actual possession regarding the earlier suit. Thereby due to withholding of the relevant documents, surrounding circumstances in regard to withdrawal of the earlier suit were not established. Therefore, any new or fresh cause of action arising to him in the absence of any permission/liberty to file another suit was not established. It cannot be disputed that once evidence on record led by the plaintiff is un rebutted, it does not necessarily mean that the same has to be accepted as gospel truth. It is for the plaintiff to establish his own case on the basis of clear and cogent evidence.

At this juncture, it is further noticed that the appellant – plaintiff has set up his claim qua the No. 4011, Cross Road No. 9, Palledar Mohalla, Ambala Cantt and property No. 3812, Pul Chameli, Ambala Cantt. to the extent of 1/6th share. His stand is apparently self contradictory in view of the reliance upon will dated 27.05.2005 as well. As per Will dated 27.05.2005 the appellant – plaintiff is purportedly entitled to half share of shop No. 3812 as well as houses bearing No. 4010 and 4011. The appellant has indeed failed to establish his case on the basis of clear evidence.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 12.01.2016 passed by the learned Civil Judge (Junior Division), Ambala and judgment and decree dated 09.12.2016 passed by the learned Additional District Judge, Ambala which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

September 07, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No