

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

RSA No.2838 of 2017

Date of decision:-12.3.2018

Angrej Singh

...Appellant

Versus

Baltej Kaur and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Lokesh Sharma, Advocate,
for the appellant.

RITU BAHRI J. (Oral)

CM No. 7040-C of 2017

For the reasons mentioned in the application, same is allowed and delay of 50 days in filing the present appeal is condoned.

Main Case

The present appeal has been filed by the appellants against the judgment dated 05.10.2016 passed by the Additional District Judge, Sri Muktsar Sahib and judgment dated 04.08.2015 passed by the trial Court, Sri Muktsar Sahib whereby the suit of the plaintiffs/respondents has been decreed for partition of land measuring 21 Marlas.

Brief facts of the case are that, plaintiffs and defendant Nos. 1 to 3 are real brothers and sisters and defendant No. 4 is their mother. They are the only legal heirs of deceased Maghar Singh. The above said Maghar Singh was owner and in possession of land in dispute. The said Maghar Singh eloped in the month of May 1993 and intimation was given to the concerned police station Sadar Sri Muktsar Sahib and regarding this rapat No. 6 dated 03.05.1993 was entered. Thereafter, he has never been heard till the filing of present suit by those who would naturally have heard of him if

he had been alive. Now after Maghar singh, the plaintiffs and defendant Nos. 1 to 4 are owner in equal share of land as mentioned in the head note of the plaint being legal heirs of Maghar Singh. The said land has never been partitioned. There is already boundary wall and rooms as mentioned in the site plan since the life of the Maghar Singh. The land in dispute has not come under consolidation proceedings. The plaintiffs have requested the defendants many times to get the partition of the land and to hand over the possession of their share but crept has developed in the minds of the defendants. To grab the share of the plaintiffs, they have started demolish old construction and started a new construction on the land in dispute and had also threatened to alienate the suit land without partition. The plaintiff requested to defendants not to demolish the old construction, not to raise new construction and not to alienate the land without effecting partition but to no effect. Hence the suit.

Upon notice, defendant Nos.2 and 5, did not appear despite the service and they were proceeded against exparte. However, defendant No. 1 appeared through counsel and has contended the suit by filing written statement while taking preliminary objection that the suit of the plaintiff is not maintainable in the present form. Defendant Nos. 3 and 4 also appeared through their counsel and filed their joint written statement. Replication was filed by the plaintiff denying the allegations contained in the written statement.

From the pleading of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to get possession by way of partition as prayed for?OPP.
2. Whether the plaintiffs are entitled to get permanent injunction

as prayed for?OPP.

3. Whether the plaintiffs are entitled for declaration as prayed for?OPP.
4. Whether the suit of the plaintiffs is not maintainable in the present form?OPD.
5. Whether the plaintiffs have not come to the court with clean hands?OPD.
6. Whether the plaintiff is barred by his act and conduct?OPD
7. Whether the plaintiffs have no locus standi and cause of action to file the present suit?OPD.
8. Relief.

On the basis of evidence produced by the plaintiffs as well as defendants, the suit of the plaintiff for possession by way of partition of land measuring 21 Marlas as detailed in the head note of the plaint as per the site plan attached with the plaint mark ABCD, has been decreed by the trial Court and declared that the plaintiffs along with the defendant Nos. 1 to 4 are entitled to 1/8 share each in the suit property and suit for permanent injunction for restraining the defendants No.1 to 4 from alienating any portion of the suit land measuring 21 Marlas and from demolishing and further restrained from raising any kind of construction on the suit land without effecting partition is also directed and suit for declaration to the effect that Maghar Singh son of Boor Singh resident of Village Haraz Tehsil and District Sri Muktsar be deemed as dead., who had gone missing since May 1993 and never been heard for seven years by those who would naturally have heard is also decreed.

Feeling dissatisfied with the findings of the trial court, defendant

-Angrej Singh son of Maghar Singh filed the appeal before the lower appellate court whereby with some modification to the extent that a preliminary decree is hereby passed for possession by way of partition of land measuring 21 marlas as described in the heading of the plaint and further judgment and decree are also modified qua relief of injunction and it is ordered that the defendants(including appellant) are restrained from alienating the property in dispute more than their share and further restrained from demolishing any portion of the suit property, in the judgment and decree, the appeal dismissed by the court.

After going through the impugned judgments, it is apparent that land measuring to the extent of $1/8^{\text{th}}$ share each and defendants have been restrained from alienating any portion of the suit land measuring 21 marlas and from demolishing and further restrained from raising any kind of construction on the suit land. Maghar Singh father of the plaintiff and defendant No.1 to 3, had gone missing since May 1993 and never been heard for the last seven years by those who would naturally have heard of him. The present suit filed by the appellant/defendant claiming their legal right on the land left by Maghar Singh. Onus to prove the said fact, Angrej Singh stated vide family partition dated 02.03.2004 as Ex.D1 by which Maghar Singh has transferred entire land to defendant No. 1-Angrej Singh. However, this family partition cannot be taken into consideration as all the LRS of Maghar Singh have not been arrayed as party to this suit as they have not mentioned the share of four sisters i.e., all the plaintiffs and defendant No.4 i.e., mother of plaintiffs and defendants No.1 and 3. As the estate of Maghar Singh was to be devolved upon all the Lrs in equal share, since he died intestate, therefore, the alleged writing dated 02.03.2004 is

not good in the eyes of law and said writing is also surrounded by suspicious circumstance as there is no arrangement for Mukhtiar Kaur w/o Maghar Singh, who is mother of the plaintiffs and defendant Nos. 1 to 3. While appellant defendant examined DW2 where he has stated that he himself had purchased the suit property and he had purchased it from one Lachman Singh, however, no writing in this regard has been produced nor said Lachman Singh was examined by him. Therefore, defendant/appellant could not prove either the family settlement dated 02.03.2004 as alleged by him nor he could prove that he has purchased the suit property and the same was not purchased by the Maghar Singh as alleged by him.

Hence, No illegality, much less perversity has been pointed out in the judgments of the lower courts below, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, appeal stands dismissed.

12.03.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned Yes
Whether reportable No