

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 2785 of 2018(O&M)

Date of Decision: October 11 , 2018.

Chamela

..... APPELLANT (s)

Versus

Ram Kumar and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant (defendant No.1 before the learned trial court) is aggrieved of judgments and decrees dated 27.02.2017 and 19.02.2018 passed by the learned Civil Judge (Senior Division), Kaithal and the learned Additional District Judge, Kaithal, whereby suit filed by the plaintiff/respondent No.1 Ram Kumar was decreed to the extent of possession.

Brief facts necessary for adjudication of the case are that, the plaintiff/respondent No.1 filed a suit against the appellant and six others, claiming a decree for possession in respect of the suit land detailed in the plaint as well as decree for mesne profits for three years at the rate to be determined by

the court. It was pleaded that the suit property measuring 90 Kanals 2 Marlas was joint property of the parties and the plaintiff was the owner of the suit land to the extent of 8/1802 share i.e., 8 kanals. The plaintiff did not want to remain in joint possession with the defendants, therefore, the plaintiff filed an application before the Assistant Collector Ist Grade, Dhand, who decided the matter vide order dated 18.01.2007 for delivery of possession of the said land which has fallen to the share of the plaintiff. Sanad Taksim (instrument of partition) dated 18.01.2007 was prepared. Share of the parties was determined and land measuring 8 Kanals as detailed in the plaint fell to the share of the plaintiff. However, possession could not be delivered to the plaintiff as the Assistant Collector, Dhand had declined to entertain the execution as it was observed that as per Section 122 of the Punjab Land Revenue Act, the delivery of possession of the property allotted on partition can be made by the revenue officer only within three years from the date of recording of Sanad Taksim (instrument of partition). Thereafter, it is only the civil court who would be competent to ensure delivery of possession to the plaintiff. It was pleaded that defendant No.2 has transferred his ownership in the suit land in favour of defendants No.3 to 7 vide release deed dated 27.07.2012 and 02.04.2013, therefore, they were impleaded as parties. Plaintiff claimed possession of the land as detailed in the plaint as per the Sanad Taksim. It was further pleaded that as the defendants are in possession of his share of the land, they are bound to pay the mesne profits for the last three years as they have used the land which actually belong to the plaintiff, at the rate to be fixed and determined by the court. The defendants were asked to handover the vacant possession of the land and pay the mesne profits, but they refused to do so.

Hence, this suit.

Appellant/defendant No.1 resisted the suit. Written statement was filed by him raising various preliminary objections, averments on merits were controverted. It was pleaded that the plaintiff is his nephew and a deed writer/commission agent by profession. Sons of appellant/defendant No.1 used to consume liquor, therefore, he used to depend upon the plaintiff, especially for all the works to be carried out at the bank, Tehsil, electricity office etc. Plaintiff, it was stated, used to obtain thumb impressions of the appellant on some blank as well as stamp papers on the pretext that he had to submit applications on these papers in different departments. Thumb impressions were affixed by the appellant in good faith. The appellant was taken to various offices where thumb impressions of the appellant were obtained. Whenever, he asked about the purpose of the same, the plaintiff always told the appellant that he need not worry as the plaintiff had verified all the papers. The appellant had no reason to doubt the plaintiff. It is stated that however a fraud had been played upon him by the plaintiff. Land in question was never given on lease to the plaintiff or his wife, neither was possession thereof delivered. No amount was ever received from the plaintiff. It was stated that the appellant/defendant No.1 had mortgaged the land to one Dewa Singh son of Tula Ram for two years on 16.01.1996. It was stated that the plaintiff in collusion with others had transferred valuable property in the name of his wife and thereafter, in his own name by forging lease deed and sale deed dated 21.01.1997. Dismissal of the suit was prayed for. Replication was filed.

From the pleadings of the parties, the following issues were framed

by the learned Tribunal:-

1. Whether the plaintiff is entitled to the suit for possession and mesne profits as prayed for? OPP
2. Whether plaintiff has no cause of action to file the present suit? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff has got no jurisdiction to entertain and try the present suit? OPD
5. Relief

Evidence was led by both the parties to substantiate their respective cases. The learned trial court on consideration of the evidence on record concluded that the suit property fell to the share of the plaintiff in the partition, therefore, he was entitled to possession thereof. A decree of possession directing the defendant to handover the vacant possession of the suit land was passed in favour of the plaintiff. No other relief was granted. Suit was partially allowed/decreed.

Appeals were filed by both defendant No.1 as well as the plaintiff against the judgment and decree passed by the learned trial court. The plaintiff claimed that mesne profits should have been awarded alongwith the relief of possession, whereas defendant No.1 claimed that suit filed by the plaintiff has been wrongly decreed, even partially. The Additional District Judge, Kaithal dismissed both the appeals. Present appeal has been filed by defendant No.1. The plaintiff has not filed any appeal challenging the judgments and decrees to the extent of mesne profits not being granted.

Learned counsel for the appellant/defendant No.1 vehemently argues that both the learned courts below have erred in even partially decreeing the suit

filed by the plaintiff/respondent No.1 as there is gross misreading of the evidence on record. It is thus prayed that this appeal be allowed and impugned judgments and decrees be set aside. Consequently, the suit filed by the plaintiff/respondent No.1 be dismissed throughout.

I have heard learned counsel for the appellant and have also gone through the file.

Learned counsel for the appellant is unable to deny that land bearing rectangle No.139, Killa No.20/1 (0K-8M), 21/1 (7-12) fell to the share of the plaintiff on partition of the joint land vide Sanad Taksim (instrument of partition) dated 18.01.2007 passed by the Assistant Collector Ist Grade, Dhand. There is nothing on record to show that the said proceedings have not attained finality. In this situation, the plaintiff was well within his rights to file the present suit because as per Section 122 of the Punjab Land Revenue Act, possession of the partitioned land could not have been delivered by the revenue court after the lapse of three years from the date of passing of instrument of partition. There is no merit in the argument raised by learned counsel for the appellant that the suit could not have been filed by the plaintiff without challenging the order of the Assistant Collector Ist Grade, Dhand wherein application filed by the plaintiff for delivery of possession was declined.

No other argument has been raised.

Both the learned courts below have returned concurrent findings of fact based on proper appreciation and consideration of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this

regular second appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 27.02.2017 and 19.02.2018 passed by the learned Civil Judge (Senior Division), Kaithal and the learned Additional District Judge, Kaithal, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

October 11 , 2018.
'om'

(LISA GILL)
JUDGE

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