

RA-RS-53-C-2016 in/and
RSA-66-2001
Date of Decision: 20.08.2018

Shiv Kumar (deceased through LRs) and othersAppellants

versus

KuntiRespondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**Present:** Mr. Vikas Kumar, Review Applicant/respondent.
Mr. Rajesh Lamba, Advocate
for the non-applicant/appellants.**AMIT RAWAL, J. (ORAL)****RA-RS-53-C-2016**

Prayer in the present review application is for recalling the order dated 24.02.2016 whereby this Court had set aside the judgment and decree of the trial Court and lower Appellate Court, vide which, suit of the respondent/plaintiff seeking possession of Plot bearing No.1191 measuring 1 Kanal 1 Marla, had been decreed.

Mr. Vikas Kumar s/o Mohan Lal representing respondent-Kunti, wife of late Mahabir Singh has appeared on her behalf by giving authorization letter to contend that the documents (Ex.D1 and D2) relied upon by the non-applicant/appellants-defendants are of 16.04.1987, whereby the vendors-Sugni and Jaidev had allegedly sold their share in their favour, by virtue of decree dated 18.10.1983 (Ex.P11), thus, he had no right

and title in the suit property. For all intents and purposes, by virtue of judgment and decree, the respondent/plaintiff had become owner of 5/8th share and remaining share belonged to Shri Ram Devi Dayal along with the other co-owners, had been sold, by virtue of the sale deed dated 31.05.1989. This fact has not been noticed of, therefore, there is an error apparent on record.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the non-applicant/appellants has drawn the attention of this Court to the documents (Ex.P2, P3 and P14) to establish that the status in the suit property was that of co-owner, therefore, rightly so, this Court relegated the parties to avail the remedy of partition.

I have heard Mr. Vikas Kumar representing review applicant/respondent and counsel for the non-applicant/appellants and of the view that there is a force in the submission of Mr. Vikas Kumar (claiming to be), grandson of Kunti Devi, for Ex. D1 and D2 are the documents having a revenue stamp of Rs.100/- allegedly executed by Sugni and Jaidev who had 5/8th share in the suit property but the fact of the matter is that by virtue of decree dated 18.10.1983, they had already sold their share in favour of Kunti Devi.

Accordingly, I recall order dated 24.02.2016 and the appeal is ordered to be restored.

RSA-66-2001

The appellants/defendants have filed the present appeal against the concurrent finding of fact, whereby suit of the respondent/plaintiff for possession of the suit property bearing plot No.1191 measuring 1 Kanal 1

Marla, has been decreed.

Respondent/plaintiff instituted the suit on the premise that the plaintiff purchased the aforementioned plot comprised in Khewat No.335 Khatuni No.671, vide sale deed bearing No.3095 dated 19.01.1984 and sale deed No.741 dated 31.05.1989. The sale deed of 19.01.1984 was by Chiranji Lal, whereas sale deed dated 31.05.1989 by other co-owner. By virtue of a decree dated 18.10.1983, the other co-owners as reflected in the *jamabandi* (Ex. D8) namely, Om Prakash, Mahender Singh sons of Thandu Ram, Prabhu son of Sukha, Manphool son of Net Ram, Jai Dev, Lajpat sons of Ram Pratap, Sugni widow of Ram Pratap, had suffered a collusive decree in favour of the respondent-Kunti Devi.

The aforementioned suit was contested by the appellants/defendants on the premise that they had become the owner of the suit property by virtue of the documents dated 16.04.1987 executed by Jaidev and Sugni (Ex.D1 and D2). The aforementioned documents did not require any registration value less than Rs.100/-. The trial Court on the basis of the pleadings of the parties, framed the following issues:-

1. *Whether the plaintiff is entitled to the possession of the suit plot on the grounds mentioned in the plaint?OPP.*
2. *Whether the suit is not maintainable in the present form?OPD.*
3. *Whether the plaintiff has no cause of action against the defendants?OPD.*
4. *Whether the plaintiff has no locus-standi to file the present suit?OPD.*
5. *Whether the suit is not property valued for the purposes of court fee and jurisdiction?OPD.*
6. *Whether the plaintiff is estopped by her own act and*

conduct to file the present suit?OPD.

7. Whether the defendants are entitled to special costs under Section 35-A of CPC?OPD.

8. Whether the defendants have become owners by way of adverse possession, if so, to what effect?OPD.

9. Relief.

Both the parties led evidence in support of their respective stands. Plaintiff brought on record document (Ex. P1 to P14). On the other hand, appellants/defendants examined five witnesses and brought on record the documents (Ex.D1 to D8).

On the basis of the aforementioned evidence brought on record, the trial Court decreed the suit. Appeal laid before the lower Appellate Court also met with the same fate.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the appellants submitted that both the courts below committed illegality and perversity in decreeing the suit as the contents of Ex.D1 and D2 were not referred to. By virtue of the aforementioned documents, the status of the appellants was that of the co-owner and the remedy, if any, was for partition. Jaidev son of Ram Pratap, attorney holder of Sugni, sold his share vide Ex.D1 and Praveen Kumar, Narender Kumar, Kamla Devi vide Ex.D2, therefore, the sale deed dated 31.05.1989 i.e. post 16.04.1987, could not have been executed, thus, there is an abdication.

Mr. Vikas Kumar, representing review applicant/respondent, submitted that the concurrent findings of fact and law cannot be interfered.

DW-1, Local Commissioner, proved the unauthorised possession of the defendants, on the other hand, plaintiff has been able to prove the ownership, Ex.D8, whereby *jamabandi* for the year 1981-1982,

Saraswati, Suman, daughters and Sugni widow of Khayali s/o Lekh Ram had 1/8th share, Om Prakash, Mahender Singh 1/8th share, Shri Ram and Devi Dayal 1/8th share, Prabhu s/o Sukha 1/4th share, Chiranji Lal, Ram Partap, Manphool Singh s/o Net Ram 3/8th share. By virtue of the sale deed dated 18.10.1983 (P-11), the aforementioned persons i.e. the defendants in civil suit, had agreed to give share in the suit property, in dispute, in favour of Kunti Devi and the other part of the land i.e. 1/8th share, and share of Chiranji Lal was left, which had been purchased by the plaintiff, by virtue of sale deed dated 19.01.1984 and 31.05.1989. Jaidev and Sugni, had already divested of their ownership, by virtue of the collusive decree, whereas Praveen Kumar, Narender Kumar, Kamla, were not shown to be having any share in the suit property, in either of any documents of plaintiff or of the defendant.

Reliance has been laid down to Ex.D1 and D2 and not on D-3. For all intent and purposes, the appellants had already sold their right in the property viz Ex.D3. In other words, the property had a value of more than Rs.100/- and could not have been passed on, for a partly amount of Rs.99/- whereas the sale deed dated 31.05.1989 is a registered document, proving the share of 1/8th share.

In my view, the appellants/defendants have not been able to prove the ownership of the property and in the absence of ownership, the possession sought in accordance with law, was unauthorised.

I do not find any illegality or perversity in the judgments and decree of the Courts below, much less; any substantial question of law arises for determination.

No ground for interference is made out.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

20.08.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No