

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

RSA No. 6031 of 2017 (O&M)

Date of decision : October 10, 2018

Charanjit Singh

.....Appellant

Versus

Daljit Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Dhirinder Chopra, Advocate
for the appellant.

LISA GILL, J.

Appellant - plaintiff is aggrieved of concurrent findings rendered against him by the learned Additional Civil Judge (Senior Division), Moga vide judgment and decree dated 10.12.2015 and learned Additional District Judge, Moga vide judgment and decree dated 01.07.2017 and consequential dismissal of his suit.

Appellant – plaintiff filed a suit for separate possession by way of partition with consequential relief of restraining the respondent – defendants from raising any sort of construction on a particular or specific portion of the property till partition by metes and bounds.

Appellant – plaintiff Charanjit Singh pleaded that he alongwith respondent No. 1 – Daljit Singh besides Chamkaur Singh, Devinder Singh and Inderjit Singh, all sons of Harchand Singh, are recorded as co-owners in joint possession of the suit property in equal shares. Chamkaur Singh and Devinderpal Singh had sold their share to respondent No. 1 – Daljit Singh and Inderjit Singh (now represented by his legal representatives). It was stated that the suit property was still joint amongst the parties. Relationship

amongst them had turned sour, therefore, the plaintiff wanted to sever the joint interest of the suit property by way of this suit.

Defendant No. 1 resisted the suit. Written statement was filed raising various preliminary objections. Averments on merits were controverted. It was stated that family partition had already taken place between the parties and the suit property had fallen to the exclusive share of defendant No. 1. An affidavit to this effect had already been executed by the plaintiff as well as their father Harchand Singh. The family settlement, it was stated was carried out by Harchand Singh father of the parties. Devinder Singh and Chamkaur Singh pursuant to the said settlement had transferred their share in favour of defendant No. 1. The suit property was in fact purchased by their father in their names when they were minors. In order to give effect to the family settlement, various sale deeds were executed to ensure conveyance of the particular shares to each member.

Written statement was filed by defendants No. 2 to 5 submitting that there were properties which were joint. Declaratory suit in this regard was pending before the learned Civil Judge (Senior Division), Moga. Defendants - Respondents No. 2 to 5 admitted the claim of the appellant qua the joint nature of the property. Replication was filed.

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

- i) Whether the plaintiff is owner in joint possession of 1/5th share of the suit property?OPP.
- ii) Whether the plaintiff is entitled for separate possession by way of partition?OPP
- iii) Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
- iv) Whether suit of the plaintiff is bad on account of non-joinder

of necessary parties?OPD

v) Whether the suit of the plaintiff is not maintainable? OPD.

vi)Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.

vii)Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record concluded that the suit property already stood partitioned between the parties. Therefore, the suit was dismissed. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Moga vide judgment dated 01.07.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellant. There is in fact no document on record to indicate that partition between the parties has taken place. There is not an iota of evidence to show as to whose share the property in question has fallen, therefore, it cannot be concluded that the suit property was the subject matter of any partition between the appellant and his brothers. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 10.12.2015 passed by the learned Additional Civil Judge (Senior Division), Moga as well as judgment and decree dated 01.07.2017 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.

It is to be noticed that the plaintiff has primarily relied upon the jamabandi for the year 2002-03 (Ex.P2) to contend that the property in

question is joint between the appellant, respondent No. 1 – Daljit Singh, Inderjit Singh (represented by his legal heirs), Charanjit Singh, Chamkaur Singh and Devinderpal Singh. The latter, Chamkaur Singh and Devinderpal Singh have not been impleaded as parties. Learned trial Court has specifically referred to the testimony of PW1 Charanjit Singh wherein he has clearly admitted that the entire property in question was purchased by their father Harchand Singh out of his own resources. It is admitted by the appellant – plaintiff that various properties had been given to him by his father including one shop and a house measuring 3 marlas. Factories at Focal Point, Moga were given to Chamkaur Singh, a house measuring 16 marlas was given to Devinder Singh, a plot located at Chandigarh to Inderjit Singh. Daljit Singh – respondent No.1 was given a shop and 1/5th share in the suit property. Affidavit dated 26.02.2008 (Ex.D1) was executed by the father of plaintiff – Charanjit Singh which is indicative of partition of his estate. Harchand Singh in this affidavit has affirmed that the property was purchased by him in favour of his four minor sons. Their shares had been duly partitioned on their attaining majority. Another affidavit dated 02.02.2009, again exhibited as Ex.D1, was executed by the plaintiff in respect to partition of the property amongst the brothers. Hand writing expert, PW10 Anil Kumar Gupta, was examined by the defendants to prove that the same was duly signed by the plaintiff. Appellant-plaintiff in this affidavit had acknowledged that his entire claim in the family property stood satisfied and there was no deficit. The satisfaction recorded in clause/para 9 of the affidavit is unqualified and not limited to the specific property/building mentioned in the first clause/para of the affidavit, as is sought to be argued by learned counsel for the appellant. The learned trial

Court has dealt with this aspect succinctly and in great detail in para 11 of its judgment dated 10.12.2015.

Pursuant to the said settlement, a number of sale deeds, which are duly discussed by both the learned courts below, were executed inter se the parties. Sale deed (Ex.D8) was also executed by Harchand Singh father of the plaintiff in favour of Manpreet Singh who is none other but the son of the plaintiff Charanjit Singh himself. An argument has been raised by learned counsel for the appellant that once Harchand Singh was not even the owner of the property in question, there was no question of Harchand Singh dividing the same amongst the brothers as the property was already in the name of the brothers. This argument is devoid of any merit once there is a clear cut admission of the plaintiff that the entire property was purchased by Harchand Singh out of his own funds and resources when all his sons were minors. Execution of the various sale deeds by the family members inter se, is clearly indicative of partition of the property. Both the learned courts below have rightly held that the plaintiff cannot take advantage of stray entries in the jamabandies (Ex.P2 and P3) to claim that he is owner of the suit property to the extent of 1/5th share.

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 10.12.2015

passed by the learned Additional Civil Judge (Senior Division), Moga as

well as judgment and decree dated 01.07.2017 which calls for interference by this Court.

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

October 10, 2018

(Lisa Gill)
Judge

rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No