

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:15.10.2018

RSA- 5642 of 2018(O&M)

Pushkar Raj Gupta

---Appellant

vs.

Jatinder Kumar Gupta and others

---Respondents

RSA- 5698 of 2018(O&M)

Pushkar Raj Gupta

---Appellant

vs.

Jatinder Kumar Gupta and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Appellant in person
Mr. Ajay Jain, Advocate
for the appellant in both the appeals

Rekha Mittal, J.

This order will dispose of RSA Nos. 5642 and 5698 of 2018 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 5642 of 2018.

The present lis pertains to partition of suit property bearing No. B-III-128, Ward No. 4, Masani Road, Mohindergarh which was previously owned by late Sh. Arjun Singh Aggarwal. Jatinder Kumar Gupta, one of the sons of late Sh. Arjun Singh Aggarwal filed the suit for possession by way

of partition claiming himself to be a co-sharer in the suit property on the basis of natural succession. It is averred that the suit property is measuring approximately 939 square yards as shown in the site plan attached with the plaint.

Defendants No. 1, 3 and 5 filed the joint written statement and admitted claim of the respondent-plaintiff. Defendant No. 2 did not contest the proceedings. Appellant-defendant No. 4 filed the written statement. He has admitted that late Sh. Arjun Singh Aggarwal was the owner in possession of the suit property. However, it is averred that the suit property was not having so much area as shown in the plaint. Authenticity of the site plan attached with the plaint is also disputed. Defendant No. 4 enclosed site plan with the written statement. He claimed himself to be absolute owner in possession of suit property on the premise that on occasion of Diwali in 1990, Sh. Arjun Singh Aggarwal invited all his family members to celebrate the festival and in presence of plaintiff, defendants No. 1 to 3 and 5 as well as near relatives, family members and neighbours, Arjun Singh Aggarwal expressed intention to relinquish the property in favour of answering defendant and also acknowledged him as absolute owner in possession of suit property. The relinquishment was made in favour of answering defendant/appellant because he used to render necessary services to his father in his profession as well as in day to day normal course of life. He is making payment of local taxes, electricity charges, water charges etc. for the past 43 years. The respondent-plaintiff is practising in Tees Hazari Court, Delhi and residing there. Defendant No. 2 is also residing in Delhi. Defendant No. 3 is a household lady and living at her matrimonial home.

In the year 1995, Sh. Arjun Singh Aggarwal was aged about 80 years. He met with an accident and suffered injury. He was taken to Delhi for treatment but could not recover. Mother of the parties was also alive till the year 2000 and no objection qua family settlement was raised in her life time. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial court dismissed the suit, in view of findings on issue No. 1 that the plaintiff has failed to show that property bearing No. B-III-128 was only property owned by late Sh. Arjun Singh Aggarwal. The Court has also taken note of that as per plea of the plaintiff, the suit property is approximately 939 square yards but Satbir, Building Expert DW1 testified that defendant No. 4 is in possession of the suit property measuring 822 square yards only. The sale certificate Ex. PW1/B does not record measurement of the property.

The judgment and decree passed by the trial court became subject matter of appeal filed at the behest of unsuccessful plaintiff/respondent and cross objections were filed by the appellant/defendant No. 4 and the same were decided vide common judgment dated 29.8.2018 passed by the Additional District Judge, Narnaul.

The sole submission made by the appellant in person and Sh. Ajay Jain, Advocate, representing the appellant is that as there is serious dispute between the parties with regard to exact measurements of the suit property, the trial court has rightly dismissed the suit but the Court in Appeal without ascertaining the exact measurements reversed the judgment and decree passed by the trial court with the observation that the same shall

be determined at the time of partition by metes and bounds. It is argued that at the time of partition, the Court only has to prepare a mode of partition and thereafter pass a final decree partitioning the joint property by metes and bounds.

I have heard the appellant and his counsel but find that the appeal is devoid of merit and deserves to be rejected.

There is no dispute between the parties that suit property is a house that has municipal number B-III-128, Ward No. 4, Masani Road, Mohindergarh. There is also no dispute between the parties that suit house was owned by Sh. Arjun Singh Aggarwal, predecessor-in-interest of the plaintiff-respondent. It is also admitted fact that Sh. Arjun Singh Aggarwal left behind seven class-I heirs i.e. parties to the suit and his wife. The widow of Arjun Singh Aggarwal passed away in the year 2000 and in this manner, the plaintiff and defendants are the class-I heirs of their parents and entitle to 1/6th share in suit property on the basis of natural succession.

The appellant-defendant No. 4 has asserted his right of ownership and possession of suit property on the basis of alleged relinquishment of rights by Sh. Arjun Singh Aggarwal at the time of Diwali festival in the year 1990. The Court in Appeal has rejected this plea of the appellant as rights in immovable property valuing more than Rs. 100/- cannot be relinquished except by way of a registered deed in view of provisions of the Indian Registration Act.

Much stress has been laid that as there is dispute between the parties with regard to exact measurements of the suit property, the Appellate Court has seriously erred by setting aside the judgment and

decree passed by the trial court and allowing claim of the respondent-plaintiff with the observations that measurement of the property shall be determined at the time of final partition between the parties. No doubt, the Appellate Court could appoint a local commission for taking measurements of the property in order to ascertain its exact area for the purpose of recording a definite finding with regard to total area of the house in question. Counsel has failed to advance any arguments much less meaningful as to what prejudice has been caused to the appellant if the exact area of the property has been left to be determined at the time of final partition by metes and bounds. As neither any prejudice has been caused to the appellant by deciding the respective shares of the parties in the suit property and leaving the exact measurements to be ascertained at the time of final partition nor any useful purpose would be served by setting aside the decree passed by the Appellate court and remittance of the case for decision of appeal afresh after determining exact measurements of the suit property except incurring inconvenience, cost and delay, I do not find any valid and justifiable reason for intervention.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

15.10.2018
paramjit

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