IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5891 of 2018 (O&M)
Date of decision: 11.12.2018

Parmod Kumar ... Appellant

Versus

Vijay Kumar and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Narender Pal Bhardwaj, Advocate
for the appellant.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for separate possession by way of partition of double storey residential house No.1312 having tax assessment No.B II 125 situated in Jamuna Gali, Yamuna Nagar filed by the respondent/plaintiff Vijay Kumar was decreed by the trial Court vide judgment and decree dated 10.02.2014 and appeal preferred by unsuccessful appellant-defendant No.2 did not find favour with the Additional District Judge, Yamuna Nagar at Jagadhri.

Counsel for the appellant would urge that Sh. Sumer Chand, father of the parties was having three residential houses bearing No.B-II-125 (house in dispute), No.B-II-127A and B-II-127B. In his lifetime, Sh. Sumer Chand allotted house in dispute to appellant/defendant No.2, house No.B-II-127A to Vijay Kumar plaintiff and No.B-II-127B Vinod Kumar defendant No.1 which was under tenancy. Vinod Kumar sold the said house to Smt. Sarla Devi vide sale deed dated 30.01.1997. It is further argued that the plaintiff was allowed to reside on first floor of disputed house and he is not entitle to retain its possession and accordingly the appellant filed counter claim seeking possession of first floor of the house in question. It is argued that the factum of partition by Sh. Sumer Chand gets substantiated from recital in sale deed Ex.D1 executed by Vinod Kumar on 30.01.1997 in favour of Smt. Sarla Devi widow of Sh. Ishwar Chand Goyal, erstwhile tenant in the said house. It is further argued that the Courts have failed to appreciate the sale deed Ex.D1 in right perspective, therefore, committed a serious error by negating plea of the appellant that house in dispute is owned by the appellant and the respondent/plaintiff has no right therein, thus, not entitle to seek separate possession by way of partition and is rather liable to deliver possession of first floor to true owner of the house.

I have heard counsel for the appellant, perused the paper book and copies of documents supplied during the course of hearing.

The respondent/plaintiff claimed himself to be co-owner in the suit house to the extent of 1/3rd share after the death of his parents who admittedly have left behind three sons arrayed as plaintiff and defendants. The claim of the respondent/plaintiff has been admitted by Vinod Kumar defendant No.1 and appellant is the only contesting defendant in the case. Indisputably, the respondent/plaintiff produced copy of decree dated 30.03.1978 Ex.P5 in respect of house bearing property tax No.B.II.256 and house tax No.B.II.127 which was passed in a suit filed by Vinod Kumar and Vijay Kumar sons of Sumer Chand against Sh. Sumer Chand claiming themselves to be owners in possession in equal share in respect of the house, subject matter of the said decree. As per the decree dated 30.03.1978, Vinod Kumar and Vijay Kumar were declared to be owners in possession in equal share in respect of property bearing house tax No.B.II.127. Counsel for the appellant has fairly conceded that out of property bearing No.127, house No.B II 127A and B II 127B have been carved out.

The appellant, in the written statement, has not specifically pleaded as to when the three houses owned by Sh. Sumer Chand were allotted to his three sons. In the sale deed dated 30.01.1997 executed by Sh. Vinod Kumar, there is reference to partition deed (takseem nama) dated 21.03.1980. This is not plea of the appellant that Sumer Chand allotted one house each to his three sons vide partition deed dated 21.03.1980. As has been noticed hereinbefore, there is no plea raised by the appellant as to when Sumer Chand allotted the aforesaid three houses to his three sons. It appears to the Court that since property No.127 was declared to be owned by Vijay Kumar and Vinod Kumar on the basis of decree passed in March, 1978 and thereafter there was partition between Vinod Kumar and Vijay Kumar in respect of that property on the basis whereof the property has been given house tax number by suffixing alphabets A and B, the sale deed executed by Vinod Kumar refer to that partition made vide takseem nama dated 21.03.1980. In the given circumstances, the appellant cannot derive any advantage to his contention from the recital with regard to takseem nama dated 21.03.1980 in the sale deed Ex.D1 executed by Vinod Kumar in favour of Smt. Sarla Devi.

Counsel for the appellant has failed to point out any materials on record to substantiate plea of the appellant that the house in dispute was allotted to the appellant by way of some settlement effected by Sh. Sumer Chand, therefore, consistent findings recorded by the Courts negating plea of the appellant to be exclusive owner of the suit house cannot be faulted with as they do not suffer from error much less perversity.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

11.12.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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