

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

RSA No.799 of 2018 (O&M)
Date of Decision: July 04, 2018

Bishan Das

---Appellant

Versus

Maya Devi and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

**Present: Mr.M.S. Uppal, Advocate
for the appellant.**

HARINDER SINGH SIDHU, J.

Defendant No.2 has filed this regular second appeal against the judgments of the Courts below whereby suit of the plaintiffs for possession by way of partition to the extent of 1/5th share of house measuring 31 feet x 68 feet situated in Ward No.11, Mansa has been decreed.

The case of the plaintiffs was that they were owners in possession of the house in question to the extent of 1/5th share and the defendants were owner in possession of the house to the extent of 4/5th share. The plaintiffs claimed to be the legal heirs of Hukum Chand son of Tahla Ram. It was pleaded that Hukum Chand and defendants No.1 to 4 were the five sons of Tahla Ram. The house was owned by Tahla Ram. Hence, after the death of Tahla Ram, Hukum Chand and defendants No.1 to 4 were owners in possession of the house in equal share. Hukum Chand died on 16.09.2003 without executing any Will. The plaintiffs being his only legal heirs were entitled to possession of 1/5th share in the house by

way of partition. As the defendants refused to admit the claim of the plaintiffs, the filing of suit was necessitated.

The suit was contested only by defendant No.2. Defendants No.1, 3 and 4 did not appear and were proceeded against ex-parte. Defendant No.2 took the plea that he was the exclusive owner in possession of the house on the basis of allotment in his favour. Tahla Ram was never the owner of the house. It was pleaded that the plaintiffs have no concern with Hukum Chand as he was not married and had no issue. It was also pleaded that Hukum Singh used to reside with his brothers Puran Chand and Bishan Dass- defendants No.1 and 2 respectively, which was evident from his ration card, which was joint with them.

In support of their case, the plaintiffs examined Plaintiff No. 1- Maya Devi as PW-1, who reiterated her case as per the plaint and also tendered various documents.

Defendant No.2 appeared as DW-1 and one Kaushal Kumar appeared as DW-2. Various documents were also tendered.

Ld. Trial Court held that the documents Ex. P-3 to Ex. P-6 revealed that plaintiff Maya Devi was the wife of Hukum Chand. Ex. P-3 was the copy of passbook of the account of Maya Devi. Ex. P-4 was the copy of voter card of Maya Devi. Ex. P-5 was the copy of ration card of Maya Devi and Ex. P-6 was the copy of Aadhar Card of Maya Devi. Ex P-8 was an order dated 20.10.2005 passed by Civil Judge (Sr. Division), Mansa granting succession certificate to the plaintiffs regarding the movable estate of Hukum Chand. Ex. P-11 was a letter issued by Principal Nehru Memorial Government College, Mansa intimating the plaintiffs that they may receive

the service benefits of deceased Hukum Chand being his legal heirs in pursuance to the direction issued by the High Court in CWP No.11982 of 2002. It was held that these documents clearly established that the plaintiffs were the legal heirs of deceased Hukum Chand. As such the contention of defendant No.2 that Hukum Chand had died unmarried and issueless was rejected. Further it was held that Defendant No.2 had not been able to establish that he was owner in possession of the house on the basis of allotment. In his cross-examination he admitted that he had no proof regarding allotment of the house to him. He further admitted that he had not deposited any amount for allotment of the house. In Ex. P-1, House Tax Assessment Register for the year 1998-99 pertaining to the suit property all the five sons of Tahla Ram have been recorded as owners. In the House Tax Assessment Register pertaining to year 1981-82, Sushila Devi wife of Tahla Ram was recorded as owner of the property. In view thereof, it was held that the plaintiffs being the legal heirs of deceased Hukum Chand had 1/5th share in the house and they were entitled to separate possession after partition to that extent. The suit was decreed.

The learned lower Appellate Court affirmed the findings of learned Trial Court.

Before the Ld. Lower Appellate Court, defendant No.2 had moved an application dated 23.10.2015 under Order 41 Rule 27 CPC for placing on record the allotment letter to prove that the house was allotted to him. The said application was dismissed vide a separate order dated 14.10.2016. Along with this appeal, the appellant has also challenged the order dated 14.10.2016.

In the application, it was stated that in the written statement filed before the Trial Court, the applicant had pleaded that the original allotment letter had been lost in floods. He had made efforts to trace the same but without success. Ultimately, he applied for a copy of the allotment letter to the Registrar Office at Mansa and also Director Land Records, Jalandhar. He obtained a certified copy of the allotment/sale deed dated 25.10.1983 registered with the office of Sub Registrar, Mansa. The certified copy was prepared on 09.10.2015 and delivered thereafter. It was pleaded that the document is very essential for the decision of the case and there had been no intentional delay or fault on part of the applicant in producing the same.

The Court noted that the suit had been filed to partition the disputed house measuring 31 feet x 68 feet. While the plaintiffs claimed that the house was earlier owned by Tehla Ram and after his death same was inherited by his five sons, defendant No.2 claimed that the disputed house had been allotted to him.

The Court noted that the copy of the sale deed sought to be proved in additional evidence pertains to property No.4/5A Mansa. However, disputed house bears Municipal No.903A, 903B, 903C, 903D, as apparent from the copy of assessment register Ex. P-1 pertaining the disputed property. Said property is recorded in the municipal record at serial No.L2402 to L244.

Further, as per sale deed dated 25.10.1983 sought to be proved in additional evidence it pertains to the property bounded as under:

“East: Street

West: House of Chamba Ram

North: Street.

South: House of Chanan Ram”

On the other hand disputed property is bounded as under:-

“East: place of Railway.

West: Street

North: Street.

South: Dr. Suresh Batra and Jaspal”

The sale deed dated 25.10.1983 pertains to property having street on eastern side and house on western side. However, the disputed house has property of Railway on eastern side and 68' street on western side. It cannot be that street on the eastern side in the year 1985 got converted into property of railway in the year 2012. Similarly, house of a private person on western side in the year 1982 cannot be converted into a street in the year 2012. Thus, it was concluded that the sale deed dated 25.10.1985 did not pertain to the disputed house and hence was not relevant for adjudication of the case.

The Ld. Court further held that no doubt defendant No.2 had stated in the written statement that the house has been allotted to him. However, he did not produce any title document or allotment letter. If the original had been lost in the floods, the defendants could have obtained the certified copy thereof even during trial. It was noted that was a condition precedent for invoking Order 41 Rule 27 CPC that the evidence sought to be tendered as additional evidence was not available during trial despite the exercise of due diligence and that the evidence is necessary to enable the Appellate Court to pronounce the judgment and for any other substantial ground. The Court held that it could not be said that the certified copy could

not be obtained during trial despite due diligence. Hence, the ingredients of Order 41 Rule 27 were not met. Accordingly, the application was dismissed.

The order of the Ld. Court rejecting the application on the aforesaid two grounds, thus, cannot be faulted.

Findings of fact have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

July 04, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No