

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.5251 of 2003 (O&M)  
Date of Order:08.02.2019

Kamal Kumar Malhotra(since deceased) through LRs

..Appellants

Versus

Roshan Lal Monga

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajan Bansal, Advocate,  
for the appellant.

Mr. Sanjay Tangri, Advocate,  
for the respondent.

ANIL KSHETARPAL, J (Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court.

Plaintiff Kamal Kumar Malhotra filed a suit for permanent injunction restraining the defendant-Roshan Lal Monga from alienating in any manner any specific portion of Shop No.30, Sabji Mandi, excess than his share and restraining the defendant from making any construction on any specific portion. It was the case of the plaintiff that the parties are co-owners in possession of the property referred to above i.e. Shop No.30.

Defendant contested the suit by pleading that the plaintiff is not co-owner in possession of the property. On completion of the pleadings, the learned trial court first framed the following issues:-

“1. *Whether the suit property was allotted to both the parties  
by New Mani Township, Punjab, Chandigarh?*

2. *If issue No.1 is proved, whether the plaintiff is entitled to injunction as prayed for?OPP*
- (3) *Whether the suit is not maintainable in the present form?OPP*
- (4) *Whether the plaintiff has got no cause of action to file the present suit?OPD*
- (5) *Whether the plaintiff has got no locus-standi to file the present suit?OPD*
- (6) *Relief.”*

Thereafter suit was dismissed but in appeal the first appellate court remanded the case back by framing additional issue which are extracted as under:-

*“1-A Whether the plaintiff is estopped by his own act and conduct from filing the suit?OPD*

*1-B Whether the suit of the plaintiff is false, frivolous, which has been filed with ulterior motive to harass and humiliate the defendant and the defendant is entitled to special costs U/s 35-A CPC?OPD*

*1-C Whether the plaintiff is owner of ½ share in the suit property on the basis of allotment letter dated 17.9.73 jointly with defendant issued by New Mandi Township, Punjab, Chandigarh on the basis of auction held on 15.6.73 and whether the plaintiff had paid any part of the sale consideration or construction charges?OPP”*

Learned trial court after re-appreciation of evidence decreed the suit and restrained the defendants from alienating any specific portion of the

property excess than his share illegally.

Learned first appellate court has however chose to reverse the judgment passed by the trial court and it has been recorded by the first appellate court that from the documents available on the file, plaintiff and defendant are not proved to be co-sharers/co-owners and that the plaintiff is estopped from filing the present case.

After hearing arguments at length, this court is of the considered view that the following substantial questions of law arise for determination:-

- (1) *Whether merely because one of the co-owner has raised construction on the plot jointly owned and had been receiving the rent, the other co-owner is estopped from claiming share in the property?*
- (2) *Whether a suit for injunction in which issue with regard to determination of title have been framed can be decided without deciding the issues of title?*
- (3) *Whether the judgment passed by the first appellate court is result of misreading or non-reading of material evidence?*

Now the stage is set for answering the questions of law.

**QUESTION NO.(I)**

***Whether merely because one of the co-owner has raised construction on the plot jointly owned and had been receiving the rent, the other co-owner is estopped from claiming share in the property?***

The shop No.30 i.e. The property in dispute was sold in a public auction which took place on 15.6.1973. The property was sold by

THE Punjab Government undertaking i.e New Mandi Township. Clause 19

of Form-A which lay down the terms and conditions of public auction, is extracted as under:-

*“19. No bid will be accepted in the name of a firm or in any name other than that of a single living person, unless the names of all the persons making the offer are given without any specification of shares and the person making the bid produces a power of attorney authorising him to bid on heir behalf. No bid will be accepted in the name of more than seven persons and if the bid is to be made in the name of an association, the bidder shall produce the necessary documents to show that the association has been duly registered and that he has the authority to bid and enter into an agreement of sale on its behalf.”*

Since, it was not permissible for a firm to give bid and purchase the property in the name of the firm, therefore, the case has to be examined in that context. Bid sheet which is Ex.PW2/1 on the file proves that Vijay Kumar had given bid. The bid sheet is signed by Roshan Lal Monga and Kamal Kumar Malhotra. Allotment letter is Ex.P1 dated 17.09.1973. The allotment letter has been issued in the name of Roshan Lal, Kamal Kumar Malhotra. Kamal Kumar Malhotra is the plaintiff whereas Roshan Lal is a defendant.

Still further, Ex.PW2/2 is a receipt issued by the New Mandi Township, dated 30.11.1994. In this receipt also, names of both plaintiff and defendant namely Roshan Lal and Kamal Kumar Malhotra has been mentioned. Similar is a position with regard to Ex.PW2/3 receipt dated

14.02.1995 and receipt Ex.PW2/4 dated 04.02.1976. It may be noted that there is no cutting in the receipts Ex.PW2/2, Ex.PW2/3, Ex.PW2/3 and Ex.PW2/4. No doubt, in the allotment letter, name of Vijay Kumar has been scored off and in his place name of Roshan Lal has been mentioned but there is no cutting in the name of plaintiff Kamal Kumar Malhotra. Vijay Kumar is not claiming any right in the property. The name of defendant has been mentioned after scoring off the name of Vijay Kumar. There is no evidence to prove that the allotment was made in favour of Roshan Lal Monga exclusively.

In the considered view of this court, first appellate court clearly overlooked these documents to reverse the finding of the trial court.

Accordingly, question no.(i) is answered in favour of the appellant.

**QUESTION NO.(ii)**

***Whether a suit for injunction in which issue with regard to determination of title have been framed can be decided without deciding the issues of title?***

It is well settled that once in an injunction suit title to the immovable property is disputed and contested by the parties and an issue to that effect is framed and evidence has been led, the court cannot be expected to decide the injunction suit without recording any finding on the aforesaid issue. Learned counsel for the respondent has submitted that since the suit was only for injunction, therefore, the court should not venture into the question of title.

This court has considered the submission, however, find no substance therein.

The trial court as well as the first appellate court have decided

in the question of title while answering the issues which have been framed. In such circumstances, this court cannot be expected to sit as a silent spectator leaving the parties to get the question of title decided in another litigation particularly when both the parties were alive to the dispute involved and they have led sufficient evidence in support of their case.

Accordingly, question no.(ii) is also answered in favour of the appellant.

**QUESTION NO.(iii)**

***Whether the judgment passed by the first appellate court is result of misreading or non-reading of material evidence?***

The answer to issue no.3 is straight and simple No one can be said to have lost its title in the immovable property only because they have not contested the recovery of the rent exclusively by other co-owner. Even if one co-owner is managing the property and has raised any construction, if any, that would not take away the rights of a co-owner in the property. Principle of estoppel can only be invoked if the party invoking it proves that because of a representation made by the other party he has changed his position to his disadvantage. This is not even pleaded case of the defendant. The title in an immovable property normally cannot be said to have vanished by invoking principle of estoppel .

Accordingly, question no.(iii) is answered in favour of the appellant.

Learned counsel for the respondent has further submitted that simpliciter suit for injunction was not maintainable.

In the considered view of this court, it is not the simpliciter suit for injunction. In fact the courts below have already framed issue of title

and decided the same.

In view of what has been stated hereinabove, the judgment passed by the learned first appellate court is set aside and that of the trial court is restored.

The regular second appeal is allowed.

February 08, 2019  
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(ANIL KSHETARPAL)  
JUDGE

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