

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

RSA No. 4212 of 1999 (O&M)

Date of Order:08.02.2019

Mohan Lal and others

..Appellants

Versus

Tek Chand and another

...Respondents

RSA No.3788 of 1999 (O&M)

Tek Chand and another

..Appellants

Versus

Mohan Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Sihota, Sr. Advocate, with
Mr. B.R.Rana, Advocate,
for the appellants (in RSA No.3788 of 1999)
for the respondents (in RSA No.4212 of 1999)

Mr. Sandeep K. Sharma, Advocate, for
Mr. Sandeep Vermani, Advocate,
for the appellants (in RSA No.4212 of 1999)
for the respondents (in RSA No.3788 of 1999)

ANIL KSHETARPAL, J(Oral)

Plaintiffs as well as defendants have filed separate appeals
assailing the judgments passed by the courts below.

Plaintiffs filed the present suit for passing a decree for
permanent injunction restraining the defendants from raising any
construction. Plaintiffs in the very first line of the plaint claim that they are
co-owners in the joint possession of the property. It may be noted here that
the parties to the litigation are successor in interest of late Sh. Bhagwan
Sahai. Plaintiffs No.1, 2 and defendant no.1 are sons, whereas Defendants
No. 2, 3 and 4 are grand sons of late Sh. Bhagwan Sahai being sons of

Mohan Lal, defendant no.1.

Defendants pleaded that in a family settlement, the entire property in dispute had exclusively fallen to the share of Jiwan Lal. They have also claimed that Jiwan Lal, again son of late Sh. Bhagwan Sahai had sold to defendants no.2 to 4 land measuring 55'x65' vide registered sale deed dated 21.05.1980 and thereafter defendants no.2 to 4 constructed one more room apart from 5 rooms which were already in existence, constructed by Jiwan Lal.

Both the Courts on appreciation of evidence have found that the family settlement as alleged by the defendants is not proved and therefore all the parties are co-sharers. The trial court passed a decree for injunction.

Learned first appellate court affirmed the finding with regard to defendants failing to prove family partition and all the parties are co-sharers. However, first appellate court after re-examining the evidence found that the defendants are in possession of the property on the basis of documentary evidence, namely, receipts of payment of house tax, receipts of payment of water charges as also receipts of payment of electricity charges. Thus, the court directed the parties to resolve their dispute by going for partition of the property.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned senior counsel appearing for the appellants-defendants submitted that once the parties were held to be co-sharers/co-owners, learned first appellate court committed an error in modifying the judgment

of the trial court. He submitted that the plaintiffs being co-sharers were entitled to injunction.

On the other hand, learned counsel for the defendants-appellants submitted that the findings of the courts with respect to family partition are erroneous.

As regards argument of learned counsel for the plaintiffs, it may be noted that the learned first appellate court has noted that the defendants are not raising any construction. In such circumstances, no relief of injunction was required to be passed.

As regards argument of learned counsel for the plaintiffs that there was a family partition, it may be noted that there is no documentary evidence to that effect. Oral evidence has been appreciated by both the courts below and the counsels failed to point out any substantive error in appreciation of evidence. Still further defendants no.2 to 4 are alleged to have purchased from their uncle Jiwan Lal vide sale deed dated 21.05.1980. Partition by family settlement is alleged to have taken place in the year 1970. The first appellate court has recorded that even the sale deed executed in favour of defendants no.2 to 4 does not record that the specific share in the property had fallen to the share of Jiwan Lal in family partition.

In view of the aforesaid facts and the evidence, this court does not find any merit in the arguments of learned counsel for the defendants. Accordingly both the appeals are dismissed.

February 08, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No