

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

RSA-1932-2019(O&M)

Date of decision:-30.9.2019

Smt.Sunita and others

...Appellants

Versus

Ravi Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Mohit, Advocate
for the appellants.

H.S. MADAAN, J.

The dispute between the parties is with regard to estate of Sh.Ved Parkash son of Sh.Ram Chand son of Sh.Sabu Ram. Sh.Ved Parkash was earlier married with Smt.Sudesh Kumari and from that wedlock, he was blessed with a son, namely, Ravi Kumar – plaintiff before the trial Court. Unfortunately, Smt.Sudesh Kumari had died when the plaintiff was aged about six months. Thereafter, Sh.Ved Parkash contracted a second marriage with Smt.Sunita Rani and Smt.Sunita Rani gave birth to three children from the loins of Sh.Ved Parkash i.e. a daughter, namely, Suman and two sons, namely, Ravinder Kumar and Pankaj Kumar. Sh.Ved Parkash had died an unnatural death i.e. in a road side accident on 22.2.2006. He had died

intestate. Plaintiff Ravi Kumar had brought a suit for declaration and separate possession by way of partition against his step mother Smt.Sunita Rani, step sister Suman and step brothers Ravinder Kumar and Pankaj Kumar, claiming that after death of Sh.Ved Parkash, the parties have inherited his estate equally i.e. in 1/5 share each; that all the properties i.e. agricultural land situated at village Dhindar, Tehsil Samalkha, District Panipat detailed at point (A), plot measuring 200 square yards situated at Samalkha, now known as Shastri Colony, Samalkha detailed at point (B), plot measuring 150 square yards detailed at point (C) situated at Purewal Colony, Panipat and a house situated in the abadi deh of village Dhindar detailed at point (D) were self acquired properties of deceased Sh.Ved Parkash; that the plot mentioned at point (C) was purchased by Sh.Ved Parkash vide sale deed dated 23.1.2002 in the name of defendants No.3 and 4, however, Sh.Ved Parkash was the actual owner of the same since defendants No.3 and 4 did not have any independent source of income to pay the price of the said plot and purchase it; that on account of death of Sh.Ved Parkash in a motor vehicular accident, a claim petition was preferred by his legal representatives in which all his five legal representatives were held entitled to equal compensation i.e. 1/5 share each. According to the plaintiff, he called upon the defendants to admit his claim with regard to having 1/5th share in the estate of Sh.Ved Parkash but they did not do so, giving

rise to a cause of action to the plaintiff to bring the suit against the defendants in the Civil Court claiming separate possession of 1/5th share in the suit property as detailed in the head note of the plaint.

On getting notice, the defendants appeared and filed a joint written statement contesting the suit raising various legal objections, on merits contending that the plaintiff had already taken his share in all the properties except plot of 150 square yards situated in Purewal Colony, Panipat; the share already received by the plaintiff is much more than to which he is entitled and is claiming; that the plaintiff has received cash amount of Rs.2 lakhs from Sh.Ved Parkash besides getting jewellery from Sh.Ram Chand - grandfather of the plaintiff; that plot measuring 150 square yards is exclusive property of defendants No.3 and 4. In the end, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement filed on behalf of defendants whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is joint owner in possession to the extent of 1/5th share of suit land, on the grounds, as detailed and described in the head note of the plaint? OPP.
2. Whether the plaintiff is entitled for separate possession by way

of partition, as alleged? OPP.

3. In case issues no.1 and 2 are proved in affirmative, then whether the plaintiff is entitled for the relief of permanent injunction, as alleged? OPP.
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
5. Whether the plaintiff has not come to the Court with clean hands? OPD.
6. Whether the plaintiff has no cause of action to file the present suit? OPD.
7. Relief.

Both the parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 3 partly in favour of the plaintiff and against the defendants and issues No.4 to 6 against the defendants. Resultantly, the trial Court vide judgment and decree dated 18.3.2016 decreed the suit of the plaintiff partly holding that the plaintiff and defendants No.1 to 4 shall be entitled to 1/5th share in the properties mentioned in Clause (B) to (D) of para No.5 of the plaint and since property mentioned in Clause (A) is an agricultural land and only revenue Court has got jurisdiction to partition it, relief with regard to separate share of the plaintiff by partition was declined. A

preliminary decree was ordered to be passed.

The defendants felt aggrieved by the said judgment and decree passed by the trial Court and had preferred an appeal before District Judge, Panipat, which was assigned to Additional District Judge, Panipat, who vide judgment and decree dated 15.1.2019 dismissed the appeal and affirmed the judgment and decree passed by the trial Court.

The defendants are feeling dissatisfied with the said judgments and decrees passed by the Courts below and have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by the plaintiff against them be dismissed.

I have heard learned counsel for the appellants besides going through the record.

Both the Courts below on analysis of the factual and legal position have found merit in the claim of the plaintiff, as such declared him co-owner to the extent of 1/5th share in the suit property, though for seeking separate possession of his share in the agricultural land have relegated him to the remedy of approaching the revenue Court. The version set up by the appellants/defendants that the plaintiff has already received a share in the properties in Clause A, B and D and that plot mentioned in revenue estate of

village Taraf Insar, Panipat i.e. property in Clause C being in the name of defendants No.3 and 4 is their absolute property was rejected.

The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

No substantial question of law comes out to be there.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

30.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No