

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

-.-

RSA 2813 of 2011 (O&M)
Date of decision: 23.10.2019

Bharat Kumar

.....Appellant

Versus

Surinder Mohan Garg and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Mr. CM Munjal, Advocate
for respondent No. 1

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Rekha Mittal, J. (Oral)

CM 7716 C of 2011

Prayer in this application is for condoning delay of 8 days in
filing the appeal.

Heard.

In view of averments made in the application supported by an
affidavit and arguments advanced, the application is allowed and delay of 8
days in filing the appeal stands condoned.

Main case

The present appeal directs challenge against judgments and
decrees passed by the Courts whereby suit for possession and permanent

injunction filed by the appellant was dismissed by the trial Court vide judgment and decree dated 25.09.2009 that came to be affirmed in appeal by the District Judge, Bathinda.

The appellant/plaintiff claimed partition of suit property i.e. plot measuring 78'x190', described in head note of the plaint. It is averred that late Shri Om Parkash, father of the parties and Shri Madan Lal, his paternal uncle were owners in equal share of disputed plot. Shri Madan Lal transferred his half share in the name of plaintiff, defendants No. 1, 5 and 6 in equal share vide registered sale deed. Shri Om Parkash became owner of half share of the suit property whereas, plaintiff, defendants No. 1, 5 and 6 became owners of 1/8th share each in the suit plot. An oral family settlement was effected in the family of Shri Om Parkash on 25.06.1997 and on the basis thereof, Om Parkash became owner of 3/4th share of suit plot whereas plaintiff and defendant No. 1 became owners of 1/8th share each. Om Parkash, plaintiff and defendant No. 1 came in joint possession of the suit property. A memorandum of family settlement executed on 30.07.1997 was registered in the office of Sub Registrar, Bathinda. By mutual convenience, the appellant came in possession of specific portion of plot on western side measuring 23.7' x 78', detailed in para 4 of the plaint. Due to unfortunate development in the family, there were strained relations between the plaintiff and his father Om Parkash. Om Parkash, in order to defeat bona fide right of the plaintiff, suffered decree dated 12.01.2002 passed in Civil Suit No.554 of 2001 in favour of defendant No. 1 and another decree dated 16.03.2002 passed in Civil suit No. 134 of 2002 in favour of his wife Shanti Devi regarding specific portion of undivided plot. The plaintiff was not

impleaded as a party in the said suit. No family settlement could be effected regarding joint property in absence of necessary parties. The plot in question still remained joint with undivided share of Om Parkash. The plaintiff already challenged decrees dated 12.1.2002 and 16.03.2002. Om Parkash, co owner to the extent of 3/4th share expired on 08.11.2003 and was survived by his widow, four sons and three daughters. He executed a Will regarding his estate in favour of his three daughters and they became owners of suit plot to the extent of 3/4th share while remaining 1/8th share belongs to defendant No. 1. Shanti Devi also expired on 26.01.2005 and her estate was inherited by defendants No. 2 to 4 on the basis of Will. As relations between the plaintiff and defendant No. 1 are strained, plaintiff does not want to keep the suit property joint with defendant No.1. Hence, the suit for separate possession of 1/8th share by way of partition.

The suit was contested by defendant No. 1. He filed the written statement and material averments raised in the written statement were noticed by the trial Court in para 2 of the judgment.

The trial Court framed issues, noticed in para 6 of the judgment of the said Court. The appellant/plaintiff appeared in the witness box to prove his case. On the contrary, respondent/defendant No. 1 examined himself to controvert case of the appellant/plaintiff and substantiate allegations raised in the written statement.

The trial Court, in view of observations recorded in paras 14-15 of the judgment, determined issue No. 1 against the appellant/plaintiff and eventually, the suit was dismissed with costs. As has been noticed herein before, the appeal preferred by unsuccessful plaintiff did not find favour

with the District Judge, Bathinda.

Counsel for the appellant would argue that in the plaint, the appellant raised a plea that he came in possession of specific portion of the plot situated on the western side measuring 23.7'x78' with boundaries, detailed in the said para. Respondent/defendant No. 1, in reply to para 4, has denied the appellant's claim of possession qua area measuring 23.7'x78' with further averments that the appellant is in possession of area measuring 19.5'x95' with boundaries mentioned in para 3 and he has wrongly claimed to be in possession of 1/8th share measuring 23.7' x 78' with alleged boundaries mentioned in para 4 of the plaint. It is argued that as defendant No. 1 has contested plea of the appellant in respect of his possession of area measuring 23.7'x78' with boundaries detailed in para 4 of the plaint, the Courts have grossly erred by rejecting plea of the appellant with regard to his entitlement to partition of suit property to the extent of his 1/8th share and possession thereof by partition of suit plot, metes and bounds.

Counsel representing respondent No. 1 has supported consistent findings recorded by the Courts by referring to the contents of registered family settlement dated 30.07.1997 in respect of various properties including suit plot measuring 78' x 190' bearing Municipal No.7/113, situated at Rama Mandi. It is further argued that as the suit property was partitioned amongst its co-owners by way of oral settlement which was later reduced into writing and also got registered, the Courts have rightly negated plea of the appellant that the suit property continued to be joint property of its co-owners and the appellant is entitle to seek partition thereof.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that there was an oral family settlement amongst members of family of Shri Om Parkash during life time of said Om Parkash and his wife Smt. Shanti Devi. The oral family settlement was reduced into writing in the shape of memorandum of family settlement dated 30.07.1997 and the same was got registered. Indisputably, as per the family settlement, the appellant became co-sharer in the suit plot to the extent of 1/8th share. Para 2 (unnumbered) at page 2 of family settlement Ex.P9, reads thus:-

“And whereas on intervention of relatives and friends, the differences and disputes between the parties to this deed were amicably resolved by means of an oral family settlement effected on 25.06.1997. In this family settlement all the disputes were resolved parties separated and properties divided among them and actual physical possession of various properties were delivered to individual -parties as per the shares falling to them in the said oral family settlement. Moveable property has also been settled.”

The trial Court, by relying upon contents of the family settlement particularly the aforesaid extract has rightly held that as the suit property was partitioned amongst its co-sharers and properties that had fallen to the share of co-sharers were actually taken possession of by the individual parties, contention of the appellant that suit plot still continued to be joint property of the appellant and his co-sharers is not tenable, therefore, he cannot seek partition of the suit property. The mere fact that defendant

No. 1 had contested claim of appellant either with regard to the area in his possession qua the suit plot or its boundaries would not entitle the appellant to press for partition of the suit property again by contending that the same continued to be joint property of the co-sharers. In this view of the matter, I do not find an error much less perversity in the judgments impugned, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

23.10.2019

Mohan Bimbura

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