

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

RSA No.1160 of 2013(O&M)

Date of decision: 28.8.2019

Chanderpati and others

.....Appellants

VERSUS

Kitabo and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. Naveen Gupta, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate and
Mr. J.S. Chatrath, Advocate for respondents No.1 to 3

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 12.11.2012 passed by the Additional District Judge, Bhiwani whereby appeal against judgment and decree dated 13.05.2009 passed by the Civil Judge (Senior Division), Bhiwani was accepted, impugned judgment and decree was set aside and suit filed by the respondent/plaintiff claiming 1/3rd share in the suit property was dismissed.

The facts relevant for disposal of the present appeal are that respondent/plaintiff Jugti Ram Nafariya is the grandson of Harnam, erstwhile owner of property depicted in red colour and marked as ABCD in the site plan produced by the plaintiff (predecessor in interest of appellants). Harnam was survived by three sons namely Manva, Singh

Ram and Sheopal @ Shiv Pal. Manva, father of the plaintiff died and his share was inherited by the plaintiff. It is averred that in the year 1999, a dispute had arisen between the parties. Singh Ram filed a suit for injunction to restrain the plaintiff and defendant No.1 to raise further construction but the same culminated into a compromise wherein plaintiff, Singh Ram and defendant No.1 were admitted to be owner of 1/3rd share each in the disputed property. Singh Ram withdrew that suit on 20.01.1971. Singh Ram sold his share to defendants No.2 and 3 vide sale deed dated 29.05.1973 but he illegally sold specific portion as no partition took place between the co-sharers. Defendant No.1 has raised some construction over the disputed property in the shape of shops being co-sharer and let out those shops to different persons. Defendant No.1 has only 1/3rd share in the disputed property and if it is presumed that he has purchased the share of defendants No.2 and 3, he has become owner of the disputed property to the extent of 2/3rd share. In this way, plaintiff is owner in possession of 1/3rd share of the property and has right to claim partition of the disputed property.

Defendant No.1 filed the written statement and raised preliminary objections regarding locus standi, cause of action and maintainability of the suit. On merits, it is pleaded that site plan attached with the plaint is not correct and according to the spot. The site plan Ex.D1 is correct. The plaintiff came in exclusive possession to the extent of his 1/3rd share, exchanged the same with plot of Ram Kumar on which he constructed his house. The said plot was transferred by defendant No.1 in favour of Ram Kumar. It is admitted that Singh Ram sold his plot to

defendants No.2 and 3 vide sale deed dated 29.05.1973 with the averments that sale was made in pursuance of the compromise. The answering defendant has raised construction over the property that fell to his share in the compromise.

The trial Court framed the issues reproduced in para 3 of its judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court determined issue No.1 in favour of the respondent/plaintiff and as a result decreed the suit and a preliminary decree for possession by way of partition by metes and bounds to the extent of 1/3rd share was passed in favour of plaintiff. As has been noticed hereinbefore, the appeal preferred by defendant No.1 - Sheopal @ Shiv Pal (since deceased) through his LRs was allowed by the first Appellate Court.

A relevant extract from findings of the first Appellate Court, in para 16 of the judgment, reads as follows:-

"Consequently, in view of the aforesaid discussion and observations, this Court has come to the opinion that plaintiff has no locus-standi and cause of action to file and maintain the present suit. Accordingly, he is liable to be stopped from filing the same by his own act and conduct because on one hand he admitted the compromise Ex.P3 whereas, on the other hand, he is seeking partition of the suit property whereas in terms of compromise Ex.P3 all shareholders are owners in possession of the suit property to the extent of their shares which took place in the year 1971 and they had raised their

construction on their shares and thereafter, their shares had been transferred either in the shape of sale deed or in the shape of exchange. Resultantly, it had fallen in other hands."

Counsel for the appellant would argue that though it is admitted that in the litigation initiated by Singh Ram by filing a suit in the year 1969, a compromise was effected between the parties on the basis whereof the suit was withdrawn by Singh Ram but the said compromise does not bear signatures of the appellant/plaintiff, therefore, the said compromise is not binding upon the appellant/plaintiff. It is further argued that since the suit property was co-owned by three sons of Harnam on the basis of inheritance to estate of Sh. Harnam and 1/3rd share co-owned by Manva, father of the appellant, was inherited by him on his (Manva's) death and the suit property was never partitioned by metes and bounds, the appellant/plaintiff is entitle to seek partition of the suit land being one of the co-sharers to the extent of 1/3rd share. It is vehemently argued that the trial Court rightly accepted claim of the appellant/plaintiff but the first Appellate Court has seriously erred and misdirected itself by reversing judgment and decree of the trial Court on the basis of misplaced reliance on any such compromise effected in the previous suit filed by Sh. Singh Ram against Sheopal @ Shiv Pal, Hazari and Jugti. It is further argued that the contesting defendant No.1 failed to adduce satisfactory much less cogent and convincing evidence that the appellant/plaintiff exchanged his share in the suit property with Ram Kumar, his step brother and got the plot of Ram Kumar in exchange where the appellant purportedly raised construction of his house.

Counsel representing respondents No.1 to 3, on the contrary, has supported the judgment and decree passed by the first Appellate Court with the submissions that the appellant cannot be allowed to blow hot and cold in the same breath. On one hand, he has admitted that during pendency of previous suit instituted in the year 1969 by Sh. Singh Ram, a compromise was effected between the parties in respect of the suit land and all the co-sharers have separated their 1/3rd share each in the suit property, therefore, the appellant cannot be heard to say that suit property continued to be joint property of the co-sharers and he is entitle to seek partition thereof being one of the co-sharers to the extent of 1/3rd share. It is further argued that the appellant intentionally produced a wrong site plan in order to conceal the factum that suit land has construction as depicted in the site plan Ex.D1, correctness whereof has been admitted by the appellant in his cross examination. It is argued that in the suit land, there is house of Thandu Ram shown in yellow colour, house of Ram Kumar son of Sheopal @ Shiv Pal shown in red colour and house of Sheopal shown in green colour.

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

Indisputably, the suit property was previously owned by Sh. Harnam and on his death, the same was inherited by his three sons namely Manva, Sheopal and Singh Ram. The parties have admitted that in the suit for injunction filed by Singh Ram against Sheopal and others including the present appellant against raising of construction therein, the matter was settled by way of compromise, placed on record of the said suit, which was

later dismissed as withdrawn in view of statement made by counsel for Singh Ram. The appellant appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW4/A and reiterated his version. In his cross examination, he had admitted factum of compromise between the parties in the previous suit, copy whereof is Ex.P1 on the file. A relevant extract from his cross examination in Hindi but translated in English, reads as follows:-

“Singh Ram filed a suit in which I and Sheopal were parties and compromise was affected therein, copy of plaint is Ex.P1. In this we had compromise, the copy of compromise is Ex.P3. It is correct that as per compromise we had taken possession of our 1/3rd share each in the papers because at that time I was in the Army. My signatures were not obtained on the compromise. When I came on vacation from Army, I came to know about the compromise. I have not challenged compromise Ex.P3 till date. At the spot towards East, Thandu Ram son of Sheopal resides, then Ram Kumar son of Sheopal resides, then eldest son of Sheopal resided who has now died and his sons are residing.”

In the later part of his cross examination, the witness has admitted the extent and nature of construction existing at the spot and the said construction being raised by other co-sharers in the year 1973 or two years later. He has also admitted that site plan Ex.D1 is correct according to spot. The appellant further admitted that he never raised any objection with regard to raising of construction by the other co-sharers or their sons.

Taking into consideration the aforesaid extract, it can safely be inferred that the appellant accepted the compromise Ex.P3 without any objection and even the co-sharers obtained possession of their respective 1/3rd share each on the basis of compromise Ex.P3. Not only this, later construction was raised on the suit land by different co-sharers within few years of the settlement arrived in the year 1971. All these facts lead to an irresistible conclusion that suit property was actually partitioned by metes and bounds amongst the co-sharers in the year 1971 on the basis of compromise Ex.P3 and for that reason houses and shops were constructed on the suit property which is now under occupation of Thandu Ram, Ram Kumar and Sheopal as depicted in the site plan Ex.D1. In the given circumstances, it is difficult to accept contention of the appellant that suit property continued to be the joint property of the co-sharers even after compromise Ex.P3 was effected in the year 1971. Once the suit property was partitioned by the co-sharers in the year 1971 and they came in possession of their 1/3rd share each according to the compromise, contention raised by the appellant that either the suit property is joint property of the co-sharers or he is entitled to seek its partition being co-sharer to the extent of 1/3rd share is patently false and has rightly been rejected by the Court in appeal by rectifying the error committed by the trial Court.

The respondents have raised the plea that the appellant exchanged the property that has fallen to his share with Ram Kumar son of Sheopal and he got a plot from Ram Kumar in exchange and raised construction of his house. The appellant has admitted that he is residing in a house in the same village. However, there is no clear evidence available

on record with regard to ownership of a plot by Ram Kumar or exchange between Ram Kumar and the appellant. At the same time, if any of the persons who is residing in the suit property by raising construction has illegally occupied the portion that had fallen to the share of the appellant/plaintiff on the basis of compromise Ex.P3, the appellant/plaintiff can avail appropriate remedy in law to recover possession of that portion from its occupant but he cannot recover possession of 1/3rd share by seeking partition of the alleged joint property on the premise of being a co-sharer of 1/3rd share. In this view of the matter, the Court in appeal has rightly held that the appellant has no locus standi to file a suit seeking partition of the suit property by claiming it to be joint ownership of the plaintiff and others.

The appellant placed on record the site plan wherein the suit property has been depicted in red colour and marked as ABCD. As has been noticed hereinbefore, the appellant has admitted the correctness of site plan Ex.D1 showing huge construction in the suit property consisting of houses and shops. The appellant in his cross examination has admitted the construction being raised by others in the year 1973 and few years later. The appellant, for the reasons best known, filed a wrong site plan apparently with a clever intent to conceal the factum of existing construction at the spot, meaning thereby that he has not approached the Court with clean hands. As per the settled position in law, a litigant who does not approach the Court with clean hands is not entitle to any relief. Analyzed from any angle, I do not find an error much less perversity in the

judgment and decree passed by the first Appellate Court that would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs. However, nothing stated hereinbefore, shall cause prejudice to the appellant to recover possession of the area that had fallen to his share from its occupant, in accordance with law.

AUGUST 28, 2019

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

(REKHA MITTAL)

JUDGE

yes/no

yes/no