

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

**RSA No. 3487 of 2013 (O&M)
Date of Decision: 31.01.2019**

Uma Bhatia and others

..... Appellants

VERSUS

Vijay Kumar Bhatia and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Adarsh Jain, Advocate,
for the appellant.

Mr. Amit Prashar, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This is a regular second appeal that has been filed seeking to challenge the decision of the Courts below whereby their suit for partition in respect of House No. 446, Sector 21-A, Faridabad, admitted to be jointly owned by all concerned, has been dismissed on illegal and invalid grounds.

2. The plaintiff-appellants herein are legal heirs of late Shri Jagdish Chand Bhatia, who expired on 17.05.2007. Before his death late Sh. Jagdish Chand Bhatia was joint owner of property described as House No. 446, Sector 21-A, Faridabad, along with Vijay Kumar Bhatia, his brother, and Manju Bhatia wife of R.K. Bhatia, another

brother, to the extent of 1/3rd share each in the said property. On the basis of the said share, a suit for partition was filed before the Civil Judge (Jr. Divn.), Faridabad contending that being legal heirs of late Sh. Jagdish Chand Bhatia, who was co-owner of the property along with the defendants, they were entitled to their share in the aforeaid house. It was contended that they asked the defendants on several occasions to give their share but to no avail. They asked the defendants to sell the house in question and to pay their share in cash. It was contended that the house in question could not be partitioned physically and it was required to be sold as per Section 2 of the Partition Act, 1893 or to buy their share which the defendants were not prepared to accept. Resultantly, the suit came to be filed.

3. Upon notice, defendants appeared and filed joint written statement and raised preliminary objections of maintainability; cause of action; and locus standi. On merits, the relationship of the plaintiffs with late Sh. Jagdish Chand Bhatia was not denied, however, it was submitted that during the life time a family settlement took place between late Sh. Jagdish Chand Bhatia and defendants and on the basis of this family settlement, the defendants became owners in possession of the suit property.

4. Replication was not filed and on the basis of the pleadings of the parties, following issues were framed by the trial Court on 21.08.2008 :-

- “1. *Whether the plaintiffs are joint owners of the 1/3rd share in the house in question?OPP*
2. *Whether the plaintiffs are entitled for a decree of the house in question bearing No. 446, Sector 21-A, Faridabad?OPP*
3. *Whether suit of the plaintiffs is not maintainable in the present from ?OPD*
4. *Whether the plaintiffs have no cause of action & locus standi to file the present suit?OPD*
5. *Whether the suit is bad for want of concealment of material facts by the plaintiff from the Court?OPD*
6. *Relief.”*

5. In order to prove their case, the appellants-plaintiffs examined Shri Dhan Raj, Clerk as PW-1 and Sonu Bhatia plaintiff No.2 himself appeared in the witness box as PW-2 and proved the documents, namely, Transfer letter Ex. P-1 & P-2, legal notice Ex. P-3, postal receipts Ex. P-4 & P-5, copy of ration card of plaintiff as Ex. P-6 and death certificate as Ex. P-7.

6. On the other hand, defendant No.1 Vijay Kumar Bhatia appeared in the witness box as DW-1 and did not produce any documentary evidence.

7. The Civil Court while deciding issues No.1 & 2 came to hold that the allotment of the house stands in the name of H.L. Khar, who is the owner. Reliance in this regard was placed upon letter Ex. P-2 dated 28.09.1994 which was issued by HUDA, Faridabad giving

permission to Sh. H.L. Khar to transfer the premises in question in the name of J.C. Bhatia, V.K. Bhatia and Manju Bhatia. It was held that the house stood in the name of Sh. H.L. Khar and since J.C. Bhatia was not the owner of the house in question, plaintiffs could not seek decree of partition in the property in dispute. It was further held that the appellants had failed to prove their ownership along with defendants of the property in question. Consequently, suit for partition was dismissed.

8. In appeal, the Addl. District Judge, Faridabad too came to the conclusion that the appellants were not joint owners of the house in question and having no title could not ask for partition. Aggrieved against both the orders, the instant regular second appeal has been filed.

9. The following substantial question of law is formed for adjudication :-

“Whether the appellants herein are entitled to seek partition of the suit property based on a transfer letter issued in the name of their father?”

10. Learned counsel appearing on behalf of the appellants urges that both the Courts below have erred in treating the suit as if it was a suit for title, whereas the suit had been filed for partition of house No. 446, Sector 21-A, Faridbad. It is further argued that the appellants herein are the legal heirs of late Sh. Jagdish Chand Bhatia, who expired on 17.05.2007 and he was 1/3rd owner of the said suit

property along with his brother Vijay Kumar Bhatia, Manju Bhatia wife of R.K. Bhatia i.e. another brother. It is also argued that in the joint written statement filed by the respondents herein there is a clear cut admission that father of the appellants was a joint /co-owner of the suit property while taking a plea that there was a family settlement between the deceased Jagdish Chand Bhatia and the respondents on the basis of which they were put in possession of the suit property. It was argued that the Courts below have failed to consider the transfer permission dated 28.09.1994 issued by HUDA permitting transfer of the suit property in favour of three persons, namely J.C. Bhatia, V.K. Bhatia and Manju Bhatia.

11. Per contra, learned counsel appearing on behalf of the respondents herein submits that there is no infirmity in both the orders passed by the Courts below. It is argued that both the Courts below have taken note of the fact that the property stands in the name of Sh. H.L. Khar and that the appellants herein have not been able to prove their title over the suit property.

12. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings of the case.

13 During the course of arguments learned counsel for the respondents has submitted that both Uma and Mohit Bhatia who have issued relinquish deed in their favour, would not be entitled to seek any relief by way of partition of the suit property. However, this fact

is controverted by the appellants herein who denied any knowledge of the same.

14. Admittedly, a suit for partition was filed regarding House No. 446, Sector 21-A, Faridabad wherein it was pleaded that the plaintiffs are joint owners of the suit property and are entitled to seek partition to the extent of 1/3rd share being legal heirs of the deceased Jagdish Chand Bhatia. A perusal of the written statement that has been filed, the joint/ co-ownership of late Sh. Jagdish Chand Bhatia has not been denied. In fact, in the written statement, it was clearly pleaded that during the life time of late Sh. Jagdish Chand Bhatia a family settlement took place between him and the defendants in which suit property came to the share of defendant No.1, namely, Vijay Kumar Bhatia and he is now owner in possession of the said property while further submitting that there are four brothers who are living separately in their own house which was divided in a family settlement during the life time of late Sh. Jagdish Chand Bhatia. Both the Courts below have erred in dismissing the suit for partition primarily on the basis that the appellants herein have not been able to establish by placing any document on the record that the suit property stood duly transferred in the name of late Sh. Jagdish Chand Bhatia, Vijay Bhatia and Smt. Manju Bhatia while further holding that Sh. H.L. Khar had not been made party to the suit proceedings when the respondent-defendants themselves have admitted to the effect that

late Sh. Jagdish Chand Bhatia was co-owner of the suit property. The said statement could not have been discarded. The question of title could not have come into consideration since the appellants were not seeking a declaration to that effect. This Court cannot loose sight of the fact that it is on the basis of the temporary transfer letter issued by HUDA that the respondents have been put in possession of the said property even though it is still standing in the name of H.L. Khar. The respondents herein have not disputed the fact that the said property was purchased from Sh. H.L. Khar and that the same is still in his name. The only plea that has been set up by the respondents herein is that they are in possession of the suit property on the basis of a family settlement. However, there is no proof of the said settlement on the record other than a bald statement that has been suffered. Therefore, this Court is of the view that there is an error in the orders passed by the Courts below.

15 In view of the above, this appeal is allowed and the judgments and decree passed by the Courts below are set aside. Let a preliminary decree be drawn up for partition by metes and bounds.

31.01.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.