

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

RSA-1314-2014(O&M)

Date of decision:-22.7.2019

Smt.Sumitra Devi and others

...Appellants

Versus

Harbans Lal Sehgal and others

...Respondents

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

Present: Ms.Alka Sarin, Advocate
for the appellants.

Mr.Harkesh Manuja, Advocate
for respondent No.1.

H.S. MADAAN, J.

In nutshell, facts of the case are that plaintiff Harbans Lal Sehgal son of late Sh.Daryai Lal Sehgal, resident of Yamuna Nagar, Tehsil Jagadhri, District Yamuna Nagar had brought a suit against defendants Smt.Sumitra Devi widow of late Sh.Ram Lal Sehgal, Sh.Harvinder Kumar Sehgal and Sh.Devinder Singh Sehgal sons of Sh.Ram Lal Sehgal, all residents of 62-A, Model Town Yamuna Nagar, Tehsil Jagadhri, District Yamuna Nagar as well as against Smt.Kusum Kapoor wife of Sh.Mohinder Pal Kapoor, Smt.Neelam Malhotra wife of Sh.Suresh Kumar Malhotra and Sh.Surinder Kumar

Sehgal, seeking separate possession of 1/3rd share by way of partition by metes and bounds of the property fully detailed in the site plan attached bearing No.62-A situated in Model Town, Yamuna Nagar consisting of three shops S1, S2, S3 and one room R-3, two open yards along with construction made on the first floor on the common joint property including three rooms, hall room, verandah and toilet and in addition to that seeking permanent injunction restraining the defendants from changing the existing nature of the suit property by raising new construction thereupon and demolishing the existing construction and from alienating any specific portion of the suit property in any manner.

As per version of the plaintiff Sh.Harbans Lal Sehgal, he had two more brothers, namely, Sh.Ram Lal Sehgal and Ram Kishan Sehgal; that Sh.Ram Kishan Sehgal and Sh.Ram Lal Sehgal have already expired; that the defendants are legal heirs of Sh.Ram Lal Sehgal and Sh.Ram Kishan Sehgal had died issueless, however, he had executed a legal and valid will dated 5.4.1998 in favour of Sh.Surinder Sehgal bequeathing his share in the suit property to Sh.Surinder Sehgal; that all the three brothers were joint owners in possession of the suit property; that in the year 1970 a Civil Suit bearing No.157 titled Ram Kishan Sehgal Versus Ram Lal Sehgal was filed seeking a declaration and a decree dated 13.3.1970 was passed to the effect that Sh.Ram Kishan Sehgal was owner in

possession of two shops and two rooms with verandah on both sides, whereas Harbans Lal Sehgal, present plaintiff, was owner in possession of three shops with verandah in front thereof; that Sh.Ram Lal Sehgal, husband of defendant No.1 and father of defendants No.2 to 6 was declared owner in possession of portion shown in red colour in rough site plan; thereafter all the three brothers by mutual consent constructed some portion of open space left vacant in common property by joint funds and after construction each brother decided to occupy the portion which was adjacent to their respective property, thus it is clear that remaining portion of property bearing No.62-A remained joined property of all the three brothers, however after some time all the three brothers with joint funds constructed three shops i.e. S1, S2 and S3 and a room R3, in the common joint property; that the property is still joint and plaintiff has 1/3rd share in the same and besides the shops and room the whole property shown in green colour has not been partitioned by metes and bounds among the parties; in addition the property on the ground floor which is a common joint property of the parties, defendant No.2 has constructed a hall room, room verandah lobby, kitchen and toilet and defendant No.3 has constructed one room, marked R4 on the roof of this common joint property with prior permission and consent of the plaintiff. Therefore, partition of that property was also sought.

On notice, the defendants appeared and filed a written

statement contending that plaintiff has his permanent residence at Chandigarh, as such no portion of the residence bearing No.62A Model Town Yamuna Nagar was ever allotted to him; that he was given only shops situated in outer part of property 62A; that the space left open in the residential portion was not even joint property and the plaintiff has no legal right or interest in the suit property; that common space left open in residential portion was the joint property of two brothers, namely Ram Lal Sehgal and Ram Kishan Sehgal. In the end, those defendants prayed for dismissal of the suit.

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

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

1. Whether the plaintiff is entitled to a decree for separate possession of 1/3rd share by way of partition of the disputed property as prayed? OPP.
2. Whether the suit of the plaintiff is false and frivolous? OPD.
3. Whether the defendants are owners in possession of the suit property? If so its effect? OPD.
4. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove his case, the plaintiff got his statement recorded as PW1 besides tendering certain documents.

On the other hand, defendants had examined Smt.Madhu Sharma as DW1, Sh.Devinder as DW2 and Smt.Sumitra as DW3.

After hearing the learned counsel for the parties, the trial Court dismissed the suit of the plaintiff with costs. This was so done vide judgment and decree dated 18.1.2010.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Yamunanagar, who vide judgment and decree dated 23.9.2013 accepted the appeal partly to the extent of declaring that the disputed open space of property No.62-A is impartible property of the parties and the suit for partition for that reason was dismissed.

Being dissatisfied with the judgment and decree passed by the first Appellate Court, the defendants No.1, 3, 4 and 5 had filed the present Regular Second Appeal before this Court, notice of which was issued to the respondents.

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

The trial Court in its judgment had observed that open space in property No.62-A had been given to Ram Lal Sehgal as per decree passed in Civil Suit No.157 of 1970, as such suit filed by plaintiff was barred by principle of res judicata. The first Appellate

Court disagreed with the trial Court on that point and referring to the decree passed in the earlier litigation and site plan attached therewithin Ex.P2, observed that portion shown green and marked IJKPMQGI fell to the share of plaintiff, whereas shown as blue and marked PONFQM fell to share of Ram Kishan Sehgal and portion shown red and marked BCRS fell to the share of Ram Lal Sehgal, the predecessor-in-interest of present defendants. Whereas in last part of decree, it was mentioned that open space of ground yard would be kept as common property. The observations in that regard by learned District Judge, Yamunanagar are quite relevant and are reproduced as under:

13. The line mentioning “...and the open space of ground yard kept as common property” was scribed in continuation of the line in which portion allocated to Ram Lal was described and, therefore, learned trial court formed an opinion that the open space was intended to be given to the defendants. The other reason for forming such opinion on the part of learned trial was that if the open space were meant for keeping as a common property, then the words used for passing decree should have been “open space of the ground yard is to be kept as common property” instead of using words “open space of ground yard kept as common property”.

14. This court on appraisal of evidence is of firm opinion that there was no scope left with the trial court to make above referred interpretation of the decree Ex.D1 passed in Civil Suit No.157 of 1970 because of another round of litigation which the parties after passing of decree Ex.P1 had undergone leading to passing of another judgment, a certified copy of which is available as Ex.P2. Said judgment was passed in a Civil Suit No.305CS/1985, which the present plaintiff had filed for the

partition of land which vide earlier decree Ex P1 was described as open space of courtyard in civil suit No 157 of 1970. Learned trial court had dismissed said suit vide judgment Ex D2. Dissatisfied with the said judgment, the plaintiff filed an appeal which was decided vide judgment Ex.P4. it is pertinent to notice from judgments Ex.P4 and Ex.P2 is that the present plaintiff claimed partition by metes and bound of the same property which vide decree Ex.P1 of civil suit No.157 of 1970 was described as 'open space of courtyard' and the courts in subsequent litigation bearing civil suit No.305CS of 1985, had held that the said property is partible between plaintiff and the defendants.

15. So, the predecessor-in-interest of present defendants who was party in civil suit No.305CS of 1985 should have raised a specific plea and ought to have also claimed a specific issue in civil suit No.30508 of 1985 that the open space of courtyard had fallen to his share vide decree passed in civil suit No.157 of 1970 if he were actually the owner thereof. The fact, however, remains that no issue on that point was claimed and the appellate court in concluding part of paragraph No.10 of its judgment Ex.P4 had confirmed the findings of learned trial court on the point that property in dispute was not partible between the parties. Such finding was not assailed by the predecessor-in-interest of the defendants by filing appeal and as a result, the judgment Ex.P4 became final between the parties. So, there is no further scope now to hold that the disputed portion which was held to be not partible between the parties had been allotted to the present defendants. Viewed from this perspective, the findings of learned trial court to the contrary are untenable and are, thus, reversed holding that the open space of courtyard is impartible property of the parties.

16. Undeniably, the present suit is filed by the plaintiff for the partition of same land in respect of which an earlier suit filed by him for the same relief was dismissed by the trial court vide judgment Ex.D2 and by the appellate court vide judgment Ex.P4.

So, learned trial court has rightly held that the present is barred by principle of resjudicata.

17. Since the suit itself is barred by principle of resjudicata, the documents sought to be tendered by way of additional evidence pales into insignificance and are neither relevant nor necessary for the decision of the suit or the appeal. The application for additional evidence moved by the plaintiff is, therefore, dismissed.

Thus I do not find any illegality or infirmity in the judgment passed by the learned First Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

No substantial questions of law arises.

Finding no merit in the appeal, the same stands dismissed.

22.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No