

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

RSA No.1753 of 2017 (O&M)

Date of decision : 25.03.2019

Hargopal

...Appellant

Versus

Dharampal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Kumar, Advocate for the appellant.

Mr. S.D. Bansal, Advocate for the respondents.

ANIL KSHETARPAL, J.

Defendant No.1-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court passing a preliminary decree for partition of the ancestral house to the extent of one half share while reversing the judgment of the trial Court.

Plaintiff-respondent filed a suit for declaration that he is owner of 1/3rd share in possession of the property and also sought partition of the ancestral property. It was claimed by the plaintiff that late Sh. Gauri Shankar, predecessor-in-interest of the parties was owner and he had partitioned both the properties i.e. the ancestral house in abadi of Village Behlolpur, District Mohali as also residential house constructed upto two storey and floor mill through Will dated 06.07.1991 and after his death, property was required to be partitioned as per the Will dated 06.07.1991 but

defendant No.1 had bad intention and, therefore, he had started encroaching upon the share of the plaintiff. It was further pleaded that the complaint was also made in the police which was registered as DDR (Daily Diary Report) dated 12.12.2011.

Only defendant No.1 appeared and contested the suit whereas defendant Nos.2 to 8 did not choose to contest and were proceeded against ex parte. It was pleaded that house in question is situated within the residential area (Abadi) and the house and shop were owned and possessed by Fakir Chand who was having three sons, Jyoti Sarup, Gauri Shankar and Kedar Nath. After the death of Fakir Chand, his property was succeeded by his three sons out of whom Kedar Nath was unmarried and issueless. It was pleaded that there was oral family settlement between the brothers according to which Jyoti Sarup and Gauri Shankar were given the ancestral house whereas two-storey shop and Bara fell to the share of Kedar Nath. It is further pleaded that Jyoti Sarup wanted to sell his share in the ancestral house which was joint with Gauri Shankar and bargain was settled for ₹750/- and accordingly share of Jyoti Sarup was purchased. It is stated that Gauri Shankar during his lifetime partitioned his ancestral house on 06.07.1991 when plaintiff and defendant No.1 were declared owners of the house in equal share and Gauri Shankar who had got constructed house and also established a flour mill in the land comprised in khasra No.528 fell to the share of third son i.e. Darshan Kumar now deceased. Thus, the plaintiff claimed that the property has already been partitioned and, therefore, the suit should be dismissed.

Learned trial Court dismissed the suit. However in first appeal,

learned First Appellate Court has partially reversed the finding of the trial Court and held that ancestral house is joint between the parties and both are entitled to equal share.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant submitted that the judgment passed by the learned First Appellate Court is erroneous as it is proved on file that the property in dispute has been partitioned through document dated 06.07.1991. He further submitted that Kedar Nath who was unmarried and issueless had executed a Will in favour of the appellant which has been proved on file. He further submitted that the appellant had paid a sum of ₹2,00,000/- to the plaintiff and handed over possession of two-storey shop to the plaintiff.

This Court has considered the submissions of the learned counsel for the appellant, however, do not find any substance therein.

It has been noticed by the Court that the document dated 06.07.1991 has been admitted in additional evidence before the First Appellate Court. The aforesaid document proves that the house in question (ancestral house) jointly fell to the share of plaintiff and defendant No.1 in equal share. It has also come in evidence that third brother who has now died was given another property constructed on the land comprised in khasra No.528 i.e. double storey residential house alongwith floor mill.

As regards property inherited by defendant No.1-appellant from Kedar Nath, learned First Appellate Court has already recorded finding in

his favour. Hence, only dispute is with regard to the ancestral house.

Defendant No.1-appellant has failed to prove when he withdrew the amount of ₹2,00,000/- and paid to the plaintiff. Still further, appellant has failed to prove that possession of two-storey shop has been handed over to the plaintiff. Thus, there is no evidence of the transaction as alleged.

Accordingly, there is no error in the judgment passed by the learned First Appellate Court partly decreeing the suit filed by the plaintiff passing a preliminary decree for partition of half share in the ancestral house.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

25.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No