

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

Date of Decision: November 28, 2019

1. RSA-2208-2018 (O&M)

Sapna Laul

...Appellant

Versus

Arti Laul

...Respondent

2. RSA-2259-2018 (O&M)

Sapna Laul

...Appellant

Versus

Arti Laul

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

**Present: Mr. Amit Jain, Advocate,
for the appellant.**

**Dr. Anmol Rattan Sidhu, Senior Advocate, with
Ms. Sudha, Advocate, and
Mr. Raghav Gulati, Advocate,
for the respondent.**

ARUN PALLI, J. (ORAL)

Suit filed by the respondent-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 29.11.2014. She appealed against the said decree, and as even the appellant-defendant was aggrieved qua the finding recorded against her on Issue No. 2, she too filed the cross-objections. However, vide impugned judgment and decree, dated

19.08.2017, the Appellate Court accepted the appeal and decreed the suit, whereas cross-objections filed by the appellant were dismissed. This is how, the appellant-defendant has approached this Court vide these two appeals, which are being disposed of by a common judgment. Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

Plaintiff-Arti Laul, through Kamal Luthra, her legally appointed guardian, filed the present suit for possession by way of partition of House No. 717, Sector 14, Faridabad, by metes and bounds, for she was owner to the extent of 1/2 share therein.

In brief, the case set out by her was that she was a person with disability, for, she was mentally retarded, unmarried and aged about 38 years. Her mother-Smt. Shashi Laul had passed away on 12.04.1995, whereafter even her father, namely, Naveen Deepak Laul, died on 20.01.2006. Father of the plaintiff was survived by plaintiff-Arti Laul, defendant-Sapna Laul (wife of late Naveen Deepak Laul), who is step mother of the plaintiff, and Ashu Laul and Vidur Laul, sons of Naveen Deepak Laul. Pursuant to an application moved, the authority under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 (Ex. P-2) [for short, 'the 1999 Act'], appointed Kamal Luthra as guardian of the plaintiff. The suit property, i.e. House No. 717, Sector 14, Faridabad, was the self-acquired property of Naveen Deepak Laul and he was the absolute owner thereof. After father of the plaintiff had passed away, she filed Civil Suit

No. 249 of 2006, in respect of the suit property and vide judgment and decree, dated 24.01.2013, plaintiff as also the defendant were held to be owners in possession of 1/2 share each in the suit property. But despite that all the movable and immovable assets of the deceased continued to be in possession of the defendant-Sapna Laul. As plaintiff intended to get her share separated, but defendant declined to partition the suit property, thus, the suit.

In the written statement filed by defendant, it was pleaded, *inter alia*, that even earlier plaintiff had filed a suit for declaration wherein she had agitated that defendant-Sapna Laul was a stranger and had no relation with her late father. In fact, Naveen Deepak Laul had executed a registered Will, dated 28.04.2005 (Ex. P-21), wherein he acknowledged that he was married with Sapna Laul for he wanted someone to take care of his daughter Arti and himself. He deprived both his sons Ashu Laul and Vidhur Laul from his estate, for they were already given properties pursuant to a family settlement, dated 16.10.2001. Further, post death of Naveen Deepak Laul, both his sons had forcibly taken away Arti Laul and took her legal custody. It was denied if the plaintiff was being looked after ever by Kamal Luthra, as he was residing in Delhi. Thus, the suit was liable to be dismissed.

Vide judgment and decree, dated 29.11.2014, the Trial Court after considering the rival claims of the parties held that it was admitted that prior to his death, Naveen Deepak Laul had executed a Will (Ex. P-21)

vide which he bequeathed 1/2 share each in the suit property in favour of plaintiff and defendant. Even in an earlier suit between the parties, they were declared owners to the extent of 1/2 share each in the house in question. However, in reference to Chapter 1, Part-C, Rule 9 of the High Court Rules and Orders, it was observed that in suits where specific boundaries of a plot were mentioned, it was required to be accompanied with a map drawn to scale, depicting clearly the specific boundaries and measurements, in relation to the decree which was being sought. Whereas the plaintiff failed to place on record any site plan, depicting specific boundaries and measurements, thus, it was not even thinkable to partition the suit property by metes and bounds.

As regards Issue No. 2 that suit of the plaintiff was not filed by a proper and authorized person, it was held that defendant failed to adduce any cogent evidence in this regard, whereas plaintiff proved on record the documents (Exs. P-1 and P-2) and, therefore, the said issue was decided against the defendant. But as plaintiff had failed to prove her case, the suit was dismissed.

However, the Appellate Court upon comprehensive analysis of the matter in issue and the evidence on record concluded: even though no site plan of the suit property was produced by the plaintiff, yet there was no ambiguity regarding specifications and dimensions of the suit property. Allotment letter (Ex. P-3) revealed that Plot No. 717, Sector 14, Faridabad, measuring 444.67 Sq. Yards, was allotted by Haryana Urban Development

Authority in favour of late Naveen Deepak Laul. An analysis of the said document as also the possession letter (Ex. P-5) showed the specific dimensions of the said plot, i.e. 50' x 79'7"+80'7"/2, subsequently whereupon the house in question was constructed. Even otherwise, during pendency of the appeal, plaintiff moved an application under Order XLI Rule 27 of the Code of Civil Procedure, vide which she brought on record the approved building site plan (Ex. A-1) of the house, passed by the Haryana Urban Development Authority, by way of an additional evidence. Therefore, in the given situation and once there was no dispute that both the parties, on the basis of the Will, dated 28.04.2005 (Ex. P-21), as also the judgment and decree, dated 24.01.2013 (Exs. PW-3/A & PW-3/B), were owners to the extent of 1/2 share each, the Trial Court ought to have passed a preliminary decree of partition.

As regards finding on Issue No. 2 and the cross-objections filed by the defendant: that, in fact, she was the guardian of the plaintiff Arti Laul and the present suit was wrongly filed by Kamal Luthra as her guardian, it was concluded that plea of the defendant was misconceived, in as much both the parties were adversaries in the present suit, and there was an apparent conflict of interest. Thus, defendant-Sapna Laul could not be appointed as guardian of the plaintiff. On the contrary, Kamal Luthra who filed the present suit on behalf of the plaintiff, happened to be her real maternal uncle. Significantly, he was appointed as guardian of the plaintiff on 27.11.2006 (Ex. P-1), in terms of the provisions of the 1999 Act, by the

Committee, under Section 14, duly constituted in terms of Section 13 of the 1999 Act (Ex. P-2).

The matter could be viewed from yet another perspective. Concededly, the relief sought by the plaintiff in the present suit was for separate possession by way of partition, which pre-supposes title. It is not disputed either that in an earlier suit, i.e. **Civil Suit No. 249 of 2006 (Arti Laul v. Sh. Ashu Laul and others)**, filed by plaintiff, vide a decree, dated 24.01.2013, the parties were held to be owners to the extent of 1/2 share each and the said decree has since attained finality. It would be apposite to point out further that even the said suit was filed by Kamal Luthra on behalf of the plaintiff, for he was her duly appointed guardian. Significantly, the compromise arrived at between the parties, that formed basis of the decree, dated 24.01.2013, was signed by the parties to the *lis*, i.e. Sapna Laul and on behalf of Arti by her maternal uncle, i.e. Kamal Luthra, as also by brothers of the plaintiff. Thus, the plea that Kamal Luthra had no locus or authority to file the present suit on behalf of plaintiff-Arti Laul, lacks conviction and cannot be countenanced. Even otherwise, given the nature of the dispute at hands the said plea has no relevance in these proceedings. Rather, it reveals that endeavour of the defendant has, somehow, been to prolong the proceedings to an extent possible and understandably so, for she is in exclusive possession of the suit property. That being so, the only and the inevitable conclusion that could be reached: plaintiff was entitled to a preliminary decree of partition.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by the Appellate Court were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the specific findings and the conclusions arrived at by the Appellate Court. Accordingly, the appeals are dismissed being bereft of merit.

(ARUN PALLI)
JUDGE

November 28, 2019

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO