

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2239 of 2018 (O&M)
Date of Decision : 17.10.2019

Randhir since deceased through his LRs

.....Appellant

Versus

Dharampal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.S.P.Chahar, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiffs-respondents was partly decreed by the trial Court vide judgment and decree dated 08.04.2016 and as the appeal preferred against the said decree failed and was dismissed on 08.03.2017, the defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a decree for possession by way of partition qua the property fully described in paragraphs No.1 and 2 of the plaint and also for injunction restraining the defendants from causing encroachment over any specific portion of the suit property, which comprised of a house and two plots.

In the written statement filed by the defendant it was pleaded that the land in question was allotted to the defendant in a family partition and father of the plaintiffs namely Diwan Singh had taken his share in kind i.e. cash and jewellery, for, he was residing, post marriage, in village

Kultana as *ghar jamai*. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that the specific case set out by the defendant was that his father i.e. Amar Singh had four children namely Dalip Singh, Randhir Singh, Diwan Singh and one daughter Kishani Devi. In a family settlement amongst heirs of late Amar Singh the suit property had fallen to the share of the defendant, for, in lieu of his share, Diwan Singh was given cash and jewellery. However, defendant failed to lead any evidence to substantiate the said plea. No such family settlement was proved on record either. The documents Ex.D16 and D17, tendered in evidence by the defendant were mutations which could hardly prove the alleged family settlement. On the contrary, plaintiffs brought on record the document Ex.P14 i.e. mutation No.6203, sanctioned pursuant to a release deed No.619 dated 14.07.2006, executed by Smt. Kishani Devi, daughter of Amar Singh relinquishing her 1/4th share in favour of her three brothers namely Dalip Singh, Randhir Singh and Diwan Singh. Rather, the evidence on record showed that the aunt of the plaintiffs namely Kishani Devi was left with no interest in the suit property and only Dalip Singh, Randhir Singh and the father of the plaintiffs namely Diwan Singh had 1/3rd share each therein. Even though, post death of Dalip Singh his 1/3rd share was inherited by Randhir Singh and Kishani Devi, for, Diwan Singh had already expired but Kishani Devi relinquished even her 1/6th share in favour of Randhir Singh. Thus, Randhir Singh became the owner of 2/3rd share in the suit property whereas plaintiffs were entitled to 1/3rd share in the joint holdings. But as the plaintiffs were not found to be in possession they were

declined the consequential relief of injunction. That being so, the only and the inevitable conclusion that could be reached: the plaintiffs were entitled to a preliminary decree for partition being owner to the extent of 1/3rd share in the suit property.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

17.10.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No