

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

RSA-2385-2018 (O&M)

Date of Decision: November 21, 2019

Ram Chander Sharma

...Appellant

Versus

Usha Rani and others

...Respondents

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

Present: Mr. Ramesh Sharma, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant (plaintiff) was dismissed by the Trial Court, vide judgment and decree, dated 05.01.2015, whereas the counter claim preferred by the respondents (defendants) was allowed. For, the appeal filed by the appellant against the said decree failed, and was dismissed on 01.07.2017, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

Plaintiff prayed for injunction restraining the defendants from alienating any part of the suit property, i.e. house measuring 20' x 70' = 1400 Sq. feet, duly depicted with boundaries on all four sides in the cause title of the plaint, more than their share, without first seeking partition, and

restraining the defendants from causing any interference in his peaceful possession.

In brief, the case set out by him was that he was in exclusive possession of the suit property, whereas defendant No. 1 alleged to have purchased a share of Jetha Ram and Ghansham in the disputed property, and had, thus, become a co-sharer. For, the defendants in connivance with each other, were bent upon to alienate the suit property more than their share and without partition, thus, the suit.

In the written statement filed by the defendants it was denied if plaintiff was in exclusive possession of the suit property. It was submitted that defendant No. 1 had purchased the suit property from Jetha Ram and Ghansham Dass, sons of Hanuman Dass, vide sale deed dated 26.04.1989, and the possession thereof was delivered to defendant No. 1 as owner, although the defendants were already in possession of the suit property. Further, the defendants even raised new construction and carried out expansions in the house in question. It was denied if the suit property was joint and had not yet been partitioned by metes and bounds. Rather, the defendants were in exclusive possession of the suit property and, therefore, vide a counter claim they prayed for an injunction restraining the plaintiff for causing interference in their possession.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that claim set out by the plaintiff was that he was in exclusive possession of the house in question, measuring 20' x 70' = 1400 Sq. Feet, whereas, on the contrary the assertion

of the defendants was that they had purchased the suit property from Jetha Ram and Ghansham Dass pursuant to sale deed, dated 26.04.1989 (Ex. D-13). An analysis of the said sale deed revealed that Jetha Ram and Ghansham Dass had sold 2/3rd share, i.e. 20' x 72', comprised in Khasra No. 2753/2670 (133-3), situated in Street No. 1-C, Abohar Mandi. To substantiate their plea that after they had purchased the suit property and raised fresh construction, defendants examined Ajay Aggarwal (DW-2), Area Manager, LIC, who testified in his deposition that Usha Rani (defendant No. 1) and Chander Shekhar had applied for a housing loan of Rs. 5,00,000/-. Likewise, Sanjeev Kumar Munjal (DW-3), official of LIC, Abohar, deposed that in the records of the Corporation, house address of Ajay Kumar (defendant No. 3) was shown as Street No. 1-C, House No. 902, Abohar.

The defendants had brought on record the certified copy of the judgment and decree, dated 09.10.2014, rendered in **Civil Suit No. 533-1 of 06.08.2010**, in case titled as **Ram Piari v. Ram Chander and others.** And an analysis of the said judgment revealed that Usha Rani (defendant No. 1) was also a party to the said decree, whereas, Ram Piari had sought a declaration that she was owner and in joint possession of 1/4th share of residential house comprised in Khasra No. 2751/2670 (133-3). The said judgment would further show that Ram Chander (plaintiff) was arrayed as defendant No. 1 in the said suit and the case of Ram Piari, plaintiff therein, was that she came to know from Ram Chander, son of Kedar Nath, that there was some dispute between the other co-owners regarding the suit

property. Further, she also came to know that Jetha Ram and Ghansham Dass had executed a sale deed, dated 26.04.1989, in favour of Usha Rani, wife of Gopal Krishan. Significantly, plaintiff Ram Chander, who was defendant No. 1 in the said suit, did not choose to contest those proceedings and did not even file the written statement. Whereas, Usha Rani (defendant No. 1) contested the said suit, which was eventually dismissed. Undoubtedly, plaintiff had placed on record certain photographs of the suit property, which showed him standing inside the house in question. However, it was concluded that plaintiff had clicked those photographs while he forcibly tried to occupy the said house, for which a criminal case, i.e. FIR No. 81, dated 17.05.2011, under Sections 452/323/34 IPC, was registered against him, and he was convicted in case titled as **State v. Ram Chander**, vide judgment, dated 09.10.2014 (Ex. D-52). Even otherwise, the photographs that were being relied upon showed new construction, however, nothing was brought on record by the plaintiff to show if he had incurred any expenditure to carry out those expansions/construction. Thus, the only and the inevitable conclusion that could be reached: plaintiff failed to prove his claim that he was in possession of the suit property. Whereas, on the contrary the defendants established their exclusive possession upon the house in question being owners pursuant to the sale deed, dated 26.04.1989.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality.

Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 21, 2019

Pk Kapoor	Whether Speaking/Reasoned:	YES / NO
	Whether Reportable:	YES / NO