

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

RSA No.3886 of 2018(O&M)
Date of decision: 07.11.2019

Manoj Kumar

... Appellant

Versus

Om Dutt (deceased) through LR's and others

... Respondents

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

Present: Mr. Vishal Aggarwal, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondents/plaintiffs was decreed by the trial Court vide judgment and decree dated 14.10.2015, and as even the appeal preferred against the said decree failed and was dismissed on 27.11.2017, defendant No.1 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 declaration that house Nos.B-VI-256, B-VI-256/1 and B-VI-256/2 assigned to a house situated at Kucha Madhopuri, Ludhiana, shown in red, blue and yellow colours in the site plan appended with the plaint, was still joint and had not yet been partitioned by metes and bounds. And, for a decree for separate possession by way of partition of their shares.

In the written statement filed by defendants No.1 to 4 & 4A, it was pleaded, *inter alia*, that plaintiffs had deliberately excluded the property bearing house No.B-VI-320. The said property was constructed by Om Dutt and Guru Dutt, and plan No.1209 dated 16.03.1968 had also been filed for

sanction by two of them. In fact, there had been an oral arrangement between three sons of Chhajju Ram, vide which portion in occupation of defendants Manoj Kumar, Amit Kumar sons of Guru Dutt, and Sarika, Anu daughters of Guru Dutt was allotted to Guru Dutt. The defendants were in possession of three shops out of which one shop was being used for hosiery business, middle shop for sale of electric goods and the third shop for repairs of ACs. The portion on the back of these three shops was also in possession of defendants No.1 to 4. It was claimed that plaintiffs be put to strict proof as regards the allotment of separate numbers by the Municipal Committee. The Municipal Committee had separately assessed all the three units on the basis of earlier oral understanding of partition between the parties. And three separate numbers had been allotted, i.e. B-VI-256 for Smt. Laj Wanti, B-VI-256/1 for Smt. Ram Piari and B-VI-256/2 for Sh. Om Dutt. No objection was ever raised in this regard, for, the parties were conscious of the oral division between them. Thus, the suit was liable to be dismissed.

Likewise, in a separate written statement filed by defendants No.5 to 7, it was submitted that there has been no partition by metes and bounds between the co-owners and even the said defendants did not wish to keep their shares joint with the plaintiffs, thus, they had no objection if their shares were separated.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that claim of the plaintiffs was predicated upon a plea that suit property was still joint between the parties. Sunil Dutt (PW2) testified in his deposition that Ram Dass had purchased half share and Khushi Ram, Om Dutt, Dina Nath sons of Pt. Chhajju Ram had jointly purchased the other half share of a house situated in

Madhopuri, Ludhiana vide sale deed dated 25.02.1942. He also proved in his statement that only for the purpose of assessment of house tax, the Municipal Committee, Ludhiana as per the shares of the respective co-owners had separately assessed the annual rental value in April, 1959. Thus, separate assessment of liability to pay house tax was being misconstrued by the officials of the Committee and they assigned three separate house numbers to the suit property. The statement of Sunil Dutt (PW2) was corroborated by defendants No.5 to 7, for, the categorical stand set out by them in their written statement was that suit property was still joint and had not yet been partitioned. Significantly, in the written statement filed by defendants No.1 to 4 and 4A, it was not been specifically denied that Ram Dass owned half share and Khushi Ram, Om Dutt, Dina Nath owned the other half in the house situated at Madhopuri, Ludhiana, which was allotted No.B-VI-256. Even, the evidence on record showed that defendants No.1 to 4 and 4A admitted that house purchased vide sale deed dated 25.02.1942 was earlier allotted house No.B-VI-256. As regards the plea that three separate numbers were assigned to the suit property by the Municipal Committee, suffice it to say, in the absence of any conclusive evidence to prove that those numbers were allotted pursuant to any oral family partition, mere assignment of separate numbers to specific portions in the house in question was inconsequential. Not just that, none other than defendant Manoj Kumar (DW4) conceded in his cross-examination that no partition had taken place between the parties regarding joint property to date and he did not even know the year in which the earlier oral understanding was reached between the parties. Further, no site plan of the property involved in the family arrangement was prepared at any stage. That being so,

the only and the inevitable conclusion that could be reached was that the suit property being still joint, the plaintiffs were entitled to seek separate possession by way of partition.

In so far as the plea that plaintiffs had deliberately excluded property B-VI-320 and, therefore, the suit was not maintainable, the plaintiffs had specifically denied the assertions of the defendants in replication filed by them. Further, Sunil Dutt (PW2) categorically deposed that Guru Dutt had wrongly inserted his name in the application for sanction of the site plan, which was later deleted as he was not owner of the said plot. The said version of PW2 was also corroborated from sale deed dated 06.11.1942 (Ex.PW7/A). Even record of the Municipal Committee Ex.P8 revealed that name of Om Dutt was recorded as owner with respect to property bearing No.B-VI-320. Therefore, once the said property was not owned by Ram Dass and other legal heirs of Khushi Ram, it could never be the subject matter of the present suit for partition.

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. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

07.11.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO