

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

**RSA No.4544 of 2018 (O&M)
Date of decision: 03.07.2019**

Charan Kaur

.....Appellant

Versus

Bhagwanti Arya, through LRs.

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Parvinder Singh, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 03.02.2018 passed by the Additional District Judge, SAS Nagar, Mohali, dismissing an appeal filed by defendant-appellant (hereinafter referred to as 'the defendant') against the judgment and decree dated 10.03.2014 passed by the Civil Judge (Junior Division), Kharar whereby suit filed by plaintiff-respondent for separate possession, has been decreed.

Bhagwanti Arya, through LRs.-plaintiff (respondent herein) (hereinafter referred to as 'the plaintiff') filed a suit for separate possession, stating therein that the defendant (appellant) was owner of the house shown as ABCD in the site plan, which was fully described in the head note of the plaint. Defendant had sold major portion of the said house measuring 15' x 30' to the plaintiff vide sale deed dated 29.11.2006. After execution of the sale deed, mutation was sanctioned in favour of the plaintiff and possession was also delivered to her. It is further stated that since defendant had sold

part of the constructed house, as explained in the head note of plaint,

plaintiff was not in a position to make proper use of her share in the property and there remained a dispute between the parties. Later on, plaintiff along with her family started residing at Chandigarh. However, in her absence, defendant started misusing the property in dispute being joint among the parties. Plaintiff requested the defendant to get the property partitioned by metes and bounds, but the defendant linger on the matter on one pretext or the other. Hence, the suit.

Upon notice, defendant (appellant) filed written statement taking preliminary objections with regard to maintainability of the suit and non-joinder of the necessary parties. On merits, execution of the sale deed dated 29.11.2006 was admitted. As per defendant, it was not practically possible to separate the shares by way of partition. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for separate possession of portion of house to the extent of 15' x 30', out of total area as detailed in the plaint? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is bad for non-joinder of necessary parties? OPD
4. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Both the Courts have given a concurrent finding of fact that defendant-Charan Kaur (appellant herein) was owner of the khasra numbers mentioned in the plaint. There was no denial of the fact that she (defendant)

Kharar, Tehsil Kharar, District Mohali, to the plaintiff as per sale deed Ex.P3. By virtue of the sale deed, plaintiff stepped into the shoes of the defendant qua her share in the suit property. Moreover, mutation No.23958 has already been sanctioned in the Jamabandi for the year 2006-2007. Both the Courts below have further held that as per Jamabandi Ex.D1, land having Khasra No.358/2 (3-7) is showing numerous co-sharers and all the persons are shown in their separate possession as per arrangement amongst themselves. They have raised constructions of their houses. Defendant executed sale deed of some share of the house in favour of the plaintiff and the house is joint among the plaintiff and defendant. Partition is required to take place between the plaintiff and defendant qua the share of defendant.

Plea taken by the defendant that suit is bad for non-joinder of necessary parties has rightly been rejected by the Courts below keeping in view that as per Jamabandi Ex.D1, all the co-sharers are in their respective independent possession.

Learned counsel for the appellant has argued that in the decree, share of the plaintiff has not been clarified and hence, to that extent, the impugned judgments are liable to be modified.

Even, this argument is liable to be rejected as sale deed Ex.P3 in favour of the plaintiff is not in dispute and at the time of execution, the executing Court will demarcate the area, which has been sold by the defendant to the plaintiff.

Accordingly, after going through the impugned judgments, this Court is of the view that suit filed by the plaintiff (respondent) has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

03.07.2019

ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No