

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5447 of 2014 (O&M)

Date of decision : 29.7.2019

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Jagmohan @ Mohan

.....Appellant

vs.

Rajbir and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Ashok Kumar Khubbar, Advocate for the appellant.

Mr. Anil Ghanghas, Advocate for respondents No. 1 to 5.

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H. S. Madaan, J.

Briefly stated facts of the case are that, plaintiffs- Rajbir aged about 44 years, Smt. Nimbo aged about 74 years, Smt. Roshni aged about 55 years, Smt. Kamlesh aged about 40 years, Smt. Sudesh aged about 38 years – all daughters of Ranpat, Smt. Sunita aged about 25 years, daughter of Smt. Murti, daughter of Ranpat through Rajbir, their Special Attorney, all residents of village Pur, Tehsil Khera, District Bhiwani, had brought a suit against defendants, namely, Jagmohan @ Mohan – son, Smt Phoolpati, Smt. Santosh daughters, of Ranpat, residents of village Pur, Tehsil Bawani Khera, District Bhiwani; Satbir, Jagdish, Jai Bhagwan sons, Smt. Shanti widow, Smt. Kamlesh, Smt. Sheela daughters of Amrit; Pawan and

Kulwinder sons, Smt. Mandeep daughter, of Ramrati; Richhpal and Bhale sons of Gollu; Jagbir, Mahabir, Jaibir, Jagdish, Ramesh and Joginder – all sons of Gopal, all residents of village Pur, Tehsil Bawani Khera, District Bhiwani, seeking possession by way of partition of the suit property.

As per version of the plaintiffs, land measuring 6 kanal 1 marlas, comprised in Khewat No. 147, Khatoni No. 206 situated at village Pur, Tehsil Bawani Khera, District Bhiwani, is jointly owned and possessed by the parties to the suit; that earlier a family partition had taken place between the previous owners namely, Ranpat, predecessor-in-interest of the plaintiffs and defendants No. 1 to 3; that Ranpat was given the area shown in red colour, whereas Amrit predecessor in interest of defendants No. 4 to 12 was given the area shown in yellow colour, whereas one Gollu predecessor in interest of defendants No. 13 to 20 was given an area shown in blue colour in the site plan attached with the plaint; that no formal partition between the parties had taken place between the parties, as such there remained a continuous dispute between them. Ranpat had raised some construction in his share and the same was being used by said Ranpat and his legal heirs. Of late, defendant No.1 threatened to forcibly occupy the share of Ranpat. Then Ranpat filed a civil suit against defendant No.1 Jagmohan @ Mohan, who happened to be his son. The suit was dismissed and an appeal against judgment and decree of the trial Court is pending; that actual partition of the disputed land had not taken place and it is being used for residential

purposes; that the plaintiffs asked the defendants several times to get the joint property partitioned by metes and bounds, but to no effect. Hence, the plaintiffs brought the suit in question.

On notice, only defendant No.1 put in appearance to offered a contest. In the written statement filed by him, he had taken up various legal objections, to wit that the suit was not maintainable in the present form; that no cause of action arose to the plaintiffs to bring the suit and plaintiffs had no locus standi to file the suit and that the plaintiffs were estopped by their own act and conduct to file the suit. On merits, such defendant contended that Ranpat, father of the plaintiffs and defendants No. 1 to 3 i.e. predecessor in interest of defendants No. 4 to 12 and Dholu @ Bholu, predecessor in interest of defendants no. 13 to 20, had been joint owners in possession in equal shares i.e. $\frac{1}{3}$ rd share each. All of them had partitioned the suit property in equal shares and thereafter, Amrit constructed his house over the land measuring 1200 sq. yards. Legal heirs of Dholu @ Bholu also constructed their gher over the land measuring 1200 sq. yards and the remaining land about 2 kanals came to the share of abovesaid Ranpat, who also constructed his gher over that plot. Subsequently, on a family settlement having arrived at between said Ranpat alongwith defendant No.1 and plaintiff No.1 and by virtue of said oral family settlement the land which fell to the share of the said Ranpat in partition was given to defendant No.1 and plaintiff No.1 was given an ancestral house situated in old abadi; that after the above mentioned family settlement defendant No.1 constructed his

house over the gher consisting of five pucca rooms, kitchen, bathroom and shed etc. by incurring huge amount from his own earnings and defendant No.1 alongwith his family members have been residing therein since long; that the plaintiffs as well as defendants No. 2 to 20 have got no right, title or concern therewith; that the oral family partition was not reflected in the revenue record, due to that reason the disputed property is still shown to be joint between the owners; that the plaintiffs have been acknowledging the proprietary and possessory rights of defendant No.1 over the house constructed over an area of 1200 sq. yards, which is part of Khasra No. 84/22 and it fell to the share of Ranpat and later in further family settlement it came to defendant No.1, who has constructed his own house over there using his own funds; that plaintiff No.1 was given ancestral house situated in old Lal Dora; that said Ranpat during his lifetime had filed a civil suit for permanent injunction against defendant No.1 with respect to the above mentioned land and during the pendency of that civil suit, the said Ranpat died and the plaintiffs as well as the defendants No. 2 and 3 were impleaded as LR's of deceased Ranpat and the said civil suit was dismissed vide judgment and decree dated 13.2.2007 and defendant No.1 was held to be in exclusive possession, as absolute owner of the suit house. Such defendant prayed for dismissal of the suit.

From the pleadings of the parties, following issues were framed :

1. Whether the plaintiffs are entitled to decree for possession

by way of partition as alleged in the head note of the
plaint? OPP

2. If issue No.1 is proved, then whether the plaintiffs are
entitled to decree for permanent injunction as prayed for ?
OPP

3. Whether the suit of the plaintiffs is not maintainable in the
present form? OPD

4. Whether the plaintiffs have no cause of action or locus
standi to file the present suit? OPD

5. Whether the plaintiffs are estopped by their own act and
conduct from filing the present suit? OPD

6. Relief.

Parties were afforded opportunities to lead evidence.

Both plaintiffs and defendant No.1 produced oral as well as
documentary evidence in support of their respective case.

After hearing the arguments, the trial Court decreed the suit
of the plaintiffs vide judgment and decree dated 26.9.2011. A
preliminary decree was passed and share of the parties were depicted
as under :-

Plaintiff No.1 = 1/27th share

Plaintiff No.2 = 1/27th share

Plaintiff No.3 = 1/27th share

Plaintiff No.4 = 1/27th share

Plaintiff No.5 = 1/27th share

Plaintiff No.6 = 1/27th share

Defendant No.1	= 1/27 th share
Defendant No.2	= 1/27 th share
Defendant No.3	= 1/27 th share
Defendants Nos.4 to 12	= 1/3rd share in equal shares
Defendants Nos.13 to 20	= 1/3rd share in equal shares

The defendants were restrained permanently from raising any construction or alienating or transferring in any manner the share of the plaintiffs in the disputed land till the same was partitioned by metes and bounds.

Feeling aggrieved, the defendants preferred an appeal before the District Judge, Bhiwani, which was assigned to Additional District Judge, Bhiwani, who vide judgment and decree dated 13.5.2014 dismissed the appeal, upholding the judgment and decree dated 26.9.2011, passed by the trial Court.

Still feeling dissatisfied, the defendants have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the plaintiff-respondents, who have put in appearance.

I have heard learned counsel for the parties, besides going through the record.

The trial Court on appraisal of the pleadings of the parties and analysis of the evidence produced on file by them, in light of legal position, has observed that the disputed land is yet to be partitioned by metes and bounds. The relevant portion of para 12 of its judgment is being reproduced for ready reference:-

“12. Here in the present case, the plaintiffs have sought partition of the disputed land claiming the same to be joint. A perusal of jamabandi of village Pur tehsil Bawani Khera for the year 2001-2002 so proved on the file as Ex. P-4, the disputed land has been shown joint between the parties. On the other hand, though the sole contesting defendant No.1 has claimed that the disputed land already stood partitioned between the various co-owners but no such document through which it could be assumed that the disputed land already stood partitioned between the parties has been placed or proved on the file on the part of defendant No.1 and in absence thereof the disputed land is held to be joint between the parties. There is no dispute with respect to the fact that previously the disputed land was jointly owned and possessed by three persons namely Ranpat, Amrit and Dholu @ Golu to the extent of its 1/3rd share each and who all were the predecessor in interest of the parties to the suit. Still further there is no dispute with respect to the said 2/3rd share previously owned and possessed by said Amrit and Dholu @ Golu to the extent of 1/3rd share each now succeeded to by their legal representatives who are defendants no. 4 to 20. Now the dispute remains only with respect to the 1/3rd

share of said Ranpat, predecessor in interest of plaintiffs as well as defendants No.1 to 3. Whereas the defendant No.1 to 3 claiming the said 1/3rd share on the basis of family partition arrived at between the legal representatives of said Ranpat whereby a residential land situated at the old abadi has allegedly been given to the plaintiff No.1 but on the other hand the plaintiffs are denying any of such family partition as alleged by the defendant No.1. Even the defendant No.1 when stepped into the witness box as DW-2 and was cross examined by the counsel for the plaintiffs has very clearly admitted that in the said partition no share was given to the sisters. He has further stated that the partition has not taken place through any revenue officer or a Civil Court. There was no cogent evidence of existence of any residential house in the old abadi and its transfer in favour of plaintiff No.1 in any alleged family partition as claimed by defendant No.1. Since the disputed land is yet to be partitioned by metes and bounds, therefore, the plaintiffs are held entitled to the partition of the same as also to the relief of injunction as prayed for by them with respect to their share in the disputed land. Hence, both these issues stand decided accordingly.”

The Ist Appellate Court has also dealt with such aspects in a

proper manner. The discussion contained in the judgment is there in para No.14, which for ready reference is reproduced as under:-

“14. According to the revenue record, suit property is joint one in between its share holders. Presumption of truth is attached with the entries of the Jamabandi in view of Section 44 of Punjab Land Revenue Act, 1887, though, it is rebuttable but revenue record showing the suit property to be joint one could not be rebutted by the appellant by way of leading any cogent and believable evidence. Appellant himself appeared in the witness box as DW2 and admitted the fact that till the date of his examination, property in question had never been partitioned neither by Tehsildar nor by any Court of competent jurisdiction between its share holders. He further stated that in family settlement, no share had gone to his mother and his six sisters. His own testimony is sufficient to draw an inference that suit property had never been partitioned neither orally nor through any written document. Had it been partitioned orally as alleged by the appellant, the share would have certainly come therefrom to all legal heirs of deceased Ranpat because after death of Ranpat, his property would have not certainly been devolved only upon the appellant and plaintiff Rajbir being sons of deceased

Ranpat. Rather, it would have devolved upon all legal heirs of Ranpat. Ignoring the legal heirs of Ranpat i.e. his six daughters and widow in so called family settlement itself is sufficient to lead this Court to draw an inference that no family settlement had never been taken place between the share holders of the suit property.”

Both the Courts below have returned concurrent findings that the suit property is still joint and has not been formally partitioned by metes and bounds, thereby passing preliminary decree declaring the share of the parties.

As far as family settlement alleged by the contesting defendants, the same would be termed as a family arrangement under which the co-sharers had come in possession of their portions of the suit property, for the sake of convenience for properly enjoying the property and unless the said family settlement/partition was reported to the Halqa Patwari and got finalised and incorporated in the revenue record, the same could not be recognized as a family partition.

Learned counsel for the appellants had raised a plea that the suit is bad for partial partition but no such objection, as it comes out from the record, neither the defendant could prove this contention by bringing cogent and convincing evidence on record, nor that point was agitated before the Courts below.

The judgment and decree passed by the Courts below are

well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. No interference there with is called for in the Regular Second Appeal.

No substantial question of law arises in the present appeal and the same stands dismissed.

29.7.2019 chugh	(H.S. Madaan) Judge
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No