

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.9837 of 2018 (O&M)
Date of Decision : 08.11.2019

Phusa Ram deceased through LR's and another

.....Appellants

Versus

Smt. Bhati deceased through LR's and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Lokesh Sharma, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 15.03.2016 and as the appeal preferred against the said decree failed and was dismissed on 14.05.2018, the appellants-defendants are 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 a decree for partition of a land comprised in Ahata No.171, house No.239, measuring 14 biswansi as per Naksha Bandobasti and Khasra Abadi 1932 BK, situated in village Bawana, Tehsil and District Mahendergarh, Haryana as depicted and marked in the site plan as ABCD. Further, restraining the defendants from taking forcible possession of any specific portion of the suit property. In brief the case set out by her was that parties were co-owners in the suit property in which plaintiff had 1/6th share and the remaining 5/6th share was possessed by the

defendants. Since the plaintiff did not intend to keep her share joint, thus the suit.

In the written statement filed by defendants No.1, 2 and 4 the existence and description of the suit property was admitted however, rest of the claim of the plaintiff was denied. It was maintained that Kehar Singh son of Jiwaram used to reside with his brothers Richpal and Hetram and upon his death predecessor-in-interest of defendants No. 1, 2 and 4 inherited his estate. No Will was executed by late Kehar Singh in favour of defendant No.3. Further, defendants No.1 and 2 had $\frac{1}{2}$ share and defendant No.4 possessed $\frac{1}{4}$ th share in the suit property and they continued to be the owners in possession of their respective share for the past many years. Further, the suit property came to the share of Subhash son of Phusaram in mutual partition and, therefore, he was the owner in possession thereof but he was not joined as party to the suit. In the circumstances, question of plaintiff claiming $\frac{1}{6}$ th share in the suit land would not arise. Particularly, when the predecessor-in-interest of the answering defendants mutually partitioned the suit land 65-70 years ago, 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 plaintiff to prove her claim appeared as her own witness (PW2) and corroborated her version as set out in the plaint. Likewise, Shree Ram (PW1) her husband also testified in his deposition that plaintiff possessed $\frac{1}{6}$ th share in the suit property which was still joint. Kishori Lal, Draftsman (PW3) proved the site plan of

the suit property. Analysis of Hindi translation of naksha abadi of village Bawana, Samvat 1932 BK (Ex.P2) and khasra Pamaiesh, Samvat 1932 BK (Ex.P3), showed ownership of the suit property with the predecessor of the parties Rambaksh. Sajra Nasab (Ex.P4) of the year 1961-62 and of Samvat 1962 BK (Ex.P5) depicted the progeny/pedigree of Rambaksh in two decent lines till his three grandsons i.e. Richpal, Hetram and Kehar Singh which was in sync with the claim of the plaintiff. It was not disputed either that parties were successors of Richpal, Hetram and Kehar Singh. Copy of the judgment dated 11.11.1992, rendered in Civil Suit No.900 dated 24.12.1987 titled Phusa Ram Vs. Ved Parkash and others revealed that Will dated 10.10.1979, executed by late Kehar Singh in favour of Vedpal-defendant No.3 qua his property was validly executed. Therefore, defendant No.3 was entitled to the share of deceased Kehar Singh in the suit property. Although defendants No.1, 2 and 4 claimed $\frac{3}{4}$ th share in the suit land to the extent of $\frac{1}{4}$ th share each in terms of Naksha Bandobasti 1932 BK negating the Will and on the basis of mutual partition allegedly effected 60-65 years ago but failed to lead any evidence to prove alleged partition or the Will executed by late Kehar Singh in favour of defendant No.3, was not a genuine document. Rather, in his cross-examination Umrao Singh (DW-1) conceded the claim of the plaintiff as also the pedigree table depicted in the plaint. He also admitted that Kehar Singh had executed a Will qua his share and the suit land was still joint and had not yet been partitioned. He also conceded that he did not possess any writing to prove the alleged mutual partition. Resultantly, the defendants failed to prove that they possessed

3/4th share in the suit land or there was any mutual partition in respect thereto. As regards the share of the parties, the records of right Ex.P3 revealed that the suit property was a gair mumkin house, and thus, the parties were entitled to get the same partitioned from the Civil Court. That being so, the plaintiff was entitled to seek partition qua his 1/6th share. Likewise, defendants No.1, 2 and 4 possessed 1/6th share each and defendant No.3 possessed 1/3rd share over the suit property. As a result, defendants No.1 to 4 were also restrained from raising any construction or creating any charge over the suit land till it was partitioned.

On being pointedly asked, learned counsel for the appellants 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 concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

08.11.2019

Manoj Bhutani

(ARUN PALLI)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No