

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2497 of 2018

Date of Decision: 27.05.2019

Mohinder Bhardwaj

...Appellant

versus

Raj Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. M.L. Sharma, Advocate
for the appellant.

Amol Rattan Singh, J.

By this appeal, the second defendant in the suit instituted by respondent herein, impugns the judgment and decree issued by the first appellate court (Additional District Judge, Gurugram), dated 29.08.2017, reversing the judgment and decree issued by the learned Civil Judge (Junior Division), Gurgaon, May 20, 2015, dismissing the suit.

2. The respondent-plaintiff had instituted a suit seeking a declaration to the effect that she is a co-owner, alongwith the defendants, of the suit property earlier belonging to their father, he having died on 28.02.1989. She also sought a decree partitioning the suit property, with a consequential relief of mandatory and permanent injunction, the perpetual injunction sought being that the defendants be restrained from alienating the suit property.

3. Upon notice having been issued in the suit, the appellant herein and his co-defendants no.1 & 4 (his brothers, presently respondents no.2 and

4), appeared before the trial court and filed a written statement and raising preliminary objections of maintainability of the suit and other usual such objections on lack of *locus standi*, not coming to the court with clean hands etc. The suit being barred by time was also a plea raised by them

On merits, it was contended that the suit property was allotted to the late father of the parties on 03.04.1977 and after his death, defendants no.1 and 2, i.e. respondent no.2 and the present appellant respectively, having remained in possession thereof, and further, the agreement/re-allotment letter or any such letter conferring any right or interest in the suit property, not having been produced by the plaintiff, the suit was liable to be dismissed; it thereafter also having been averred that the father of the parties was not the owner thereof, with the Haryana Urban Development Authority still being such owner.

4. As opposed to the appellant and respondent no.2 herein, respondent no.3 (also defendant no.3 in the suit), Satish Bhardwaj, filed a separate written statement admitting the claim of the plaintiff, i.e. the sister of the defendants.

No replication having been filed, on the aforesaid pleadings of the parties, the following issues were framed by the learned trial court:-

- “1) Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
- 2) Whether the plaintiff is entitled to a decree for partition as prayed for? OPP
3. Whether the plaintiff is entitled to a decree for permanent injunction and mandatory injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
 7. Whether the suit of the plaintiff is barred by limitation? OPD
 8. Whether the plaintiff has no cause of action to file the present suit? OPD
 9. Whether the court has jurisdiction to entertain the present suit? OPD
 10. Whether the suit is bad for non-joinder/mis-joinder of necessary parties? OPD
 11. Whether the plaintiff has not come to the court with clean hands? OPD
 12. Relief.”
5. The respondent-plaintiff having examined herself and a clerk in the office of the Estate Officer-I, HUDA, Gurgaon, as witnesses, she also relied upon a letter dated 08.01.2014 written by the Public Information Officer to her counsel, Shri Vishal Sharma, Advocate.
6. The appellant and the contesting defendants on the other hand examined the son of the appellant, Nitin Bhardwaj, as DW1, and by way of documentary evidence produced an instrument appointing the said son, i.e. Nitin Bhardwaj, as the attorney of the appellant.
7. Upon appraising the evidence, the learned trial court held that no evidence having been led by the plaintiff proving the ownership of the suit property even as regards the late father of the parties, including the allotment letter referred to by her dated 03.04.1977, she therefore could not succeed in her suit as even a legal heir of her father.

As regards the letter received by her lawyer under the Right to Information Act, stating that the suit property was re-allotted in the name of her father, it was held that it could not be accepted as a document of title.

8. It was next held by that court that as per Section 91 of the Indian Evidence Act, 1872, if a contract is reduced to writing, no (other) evidence could be given in proof of the terms of such contract itself and consequently, when the allotment letter itself had not been placed on record before the court, relief of partition of the property could not be granted in favour of the plaintiff even as the legal heir of Jaikishan Bhardwaj, though she otherwise would have a right in the estate of her father.

9. On the aforesaid finding, the primary issues were decided against the respondent-plaintiff with the other issues, no.4 to 11, observed to be not pressed.

10. Consequently, the suit was dismissed by the trial court.

11. In the appeal filed by the plaintiff, the learned lower appellate court, after considering the facts, the issues framed and the evidence led before the trial court, first recorded a finding that the father and mother of the parties had both died in the years 1989 and 2011 respectively, and therefore the parties to the suit were legal heirs of their parents, equally entitled to the suit property which had not been partitioned.

The contention of the plaintiff that all original documents pertaining to the suit property were in the custody of the defendants, was also noticed by that court.

It was also noticed, that in their reply, the defendants had denied allotment of the suit property to their father and that he was the owner thereof.

12. However, thereafter it was found by that court that even as per the information received by the plaintiff from the Haryana Urban Development Authority under the Right to Information Act, Ex.P1, it had been clarified that the plot still existed in the name of the late father of the

parties, it having been re-allotted to him vide letter no.1436 dated 03.04.1977, though the conveyance deed had not been executed, which that court found was on account of the fact that documents from the legal heirs of the deceased allottee were still to be submitted.

13. Other than the above, it was found by that court that a water and sewerage bill, which though was not an exhibited document, was also issued by HUDA in the name of the late J.K. Bhardwaj, with PW2 Gopal Singh, a clerk from the office of the Estate Officer, also having proved the letter issued under the RTI Act, he also having deposed that the suit property was still existent in the name of the late father of the parties since 03.04.1977.

14. Having found as above, it was held that the observation of the learned trial court, in paragraph 18 of its judgment, to the effect that the suit property was not proved to have been allotted in the name of the father, was a wholly erroneous finding.

15. Next, holding that the suit property not having been proved to be ancestral property, it was further held that it had to be presumed to be self-acquired property of the father, to which all his legal heirs, including the plaintiff, would be entitled in equal shares.

It was also noticed by that court that the plaintiff was a widow who had stated that she is not having speaking terms with them.

16. On the aforesaid observation and findings, the appeal filed by the respondent-plaintiff was allowed, thereby also decreeing the suit in her favour.

17. Before this court, Mr. M.L.Sharma, learned counsel for the appellant, though again raised a contention to the effect that there was no allotment letter proved in favour of the father of the parties, upon query he

could not deny that the appellant and his brother were in occupation of the suit property because of the fact that it had been actually allotted to their father and therefore no eviction proceedings had ever been instituted against them or their father by HUDA, or any other agency.

19. Though he thereafter submitted that the parties be called for mediation, I am not at all inclined to accede to that request, in view of the fact that on merits it has not been shown in any manner that respondent no.1, being the sister of the appellant and his brothers, is not entitled to an equal share in the property standing even in Government records to be in the name of their late father, there being no Will ever set up to the effect that their father had disentitled her from such inheritance.

20. Consequently, finding no ground to interfere with the judgment of the 1st appellate court, this appeal is dismissed *in limine*.

A decree sheet be prepared accordingly.

May 27, 2019
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(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes