

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4987 of 2015 (O&M)

Date of Decision: 13.03.2020

Paramjit Singh

... Appellant(s)

Versus

Manjit Kaur and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Kanwal Goyal, Advocate
for the petitioner(s).

Mr. Sandeep Sharma, Advocate
for Mr. Amit Dhawan, Advocate
for respondent No.1.

Anil Kshetarpal, J.

The plaintiff/appellant has filed the regular second appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by him for grant of decree of permanent injunction restraining the defendant from constructing/alienating specific portion of undivided property.

The defendants contested the suit while asserting that the suit property has been partitioned by way of family settlement.

The learned trial Court dismissed the suit. The learned first Appellate Court, on re-appreciation of evidence, concurred with the finding of the learned trial Court. The learned first Appellate Court, in para 14 of its judgment, has extracted the statements of Piara Singh (PW.1), Santokh Singh (PW.2) as also statement of Santokh Singh in the previous suit. Para

“14. The plaintiff/appellant has sought the relief of injunction restraining the defendants/respondents from disposing off any specific khasra numbers, mortgaging, changing the nature of the suit land and from raising any kind of construction till the partition. In order to prove his case, the plaintiff has examined PW-1 Piara Singh. The cross examination of this witness is very important because he shattered the case of the plaintiff in his cross examining by stating that **“The plaintiff has not filed any suit for partition of the property till date. The defendant Manjit Kaur has made constructed one Kotha in the suit property and he volunteered said that Paramjit Singh(i.e. appellant/plaintiff) has constructed house in the suit property. No permission was taken by Paramjit Singh prior to construction of the house in the suit property. He did not mention in his affidavit regarding the construction of house by Paramjit Singh and regarding construction of Kotha by defendant Manjit Kaur in the suit property. He mentioned in his affidavit regarding as to how much property out of the suit property is constructed one or how much property is lying vacant. It is correct that house constructed by Paramjit Singh over the suit property is abutted to the road. Paramjit Singh plaintiff has constructed the above said house about 10/12 years ago”**. Santokh Singh attorney of the plaintiff while appearing into witness box as PW-2 during his cross examination has stated that **“the**

property was devolved into three shares amongst plaintiff, Dilbagh Singh and Kulwinder Singh now deceased. The land in dispute is ancestral property of the parties. It is correct that a temporary family partition has been effected between the plaintiff, Kulwinder Singh(deceased husband of defendant Manjit Kaur) and Dilbagh Singh. The factum of temporary partition was told by him to his counsel at the time of filing of the suit". The plaintiff has filed the present through his attorney Santokh Singh against whom Manjit Kaur defendant/respondent has already filed a suit before the court of Smt. Jaspreet Kaur, Civil Judge(Jr.Divn), Jalandhar and the said court vide its Judgment 06.01.2014 in para no.14 has held that "the defendant(Santokh Singh) while appearing as DW-1 himself admitted in his cross examination that partition has taken place and consequently the suit property was allotted in the name of the deceased husband of the plaintiff(i.e. Manjit Kaur who is defendant in this case) ".

This Court has heard the learned counsel for the parties at length and with their able assistance, gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant has submitted that in the revenue record, the property continues to be joint and un-partitioned and therefore, both the Courts below have erred in dismissing the suit.

This Court has considered the submissions, however, in view of categorical admission of the witnesses produced by the plaintiff, which has

been extracted above, this Court does not find substance in the arguments of

learned counsel for the appellant. Still further, the appellant, without any plausible explanation, has not appeared in the evidence.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere.

Dismissed.

The miscellaneous application(s), if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 13, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No