

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

RSA No. 1475 of 2018(O&M)

Date of decision: 4.2.2020

Balwant Rai Ahuja

.....Appellant

VERSUS

Meenu Arora and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Abhilaksh Grover, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration and partition of immovable properties and movable assets left by late Sh. Sahib Ram particularly House No.2-B/94, NIT Faridabad and Shop No.15 situated in Market No.1, opposite Hanuman Mandir, NIT Faridabad was partly decreed by the trial Court to the following effect:-

“....preliminary decree of partition is hereby passed holding that the plaintiffs and defendants are owners of 1/3rd share each in the house and are having lessee rights to the shop to the extent of 1/3rd share each in the shop. The property in question is liable to be partitioned in favour of the parties and

preliminary decree qua this aspect be drawn. However the remaining relief which is claimed is declined...”

Appeal preferred by unsuccessful defendant No.1 did not find favour with the Additional District Judge, Faridabad as the Appellate Court affirmed judgment and decree passed by the trial Court.

Counsel for the appellant has assailed consistent findings of the Courts primarily on two counts. It is argued that Inder Kumar Ahuja (defendant No.2 therein) did not contest the suit filed by the respondents/plaintiffs, successors in interest of Kusum Madan. It is further submitted that Smt. Meenu Arora – plaintiff No.1 admitted in her cross examination that Sh. Sahib Ram disinherited Sh. Inder Kumar Ahuja from inheritance as Sahib Ram was not happy with conduct of Sh. Inder Kumar Ahuja. It is further submitted that in view of aforesaid, appellant on one hand and respondents/plaintiffs on the other side should be entitle to half share each in the suit properties.

Another submission made by counsel is that respondents/plaintiffs did not seek relief of possession with a view to avoid payment of advalorem Court fee to the extent of share claimed by them, therefore, the suit is liable to be dismissed for want of maintainability. For this purpose, reference has been made to the provisions of Section 34 of the Specific Relief Act, 1963.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

Be that as it may, it is undisputed position of the case that suit property was owned by Sh. Sahib Ram who left behind three class-I heirs

namely Sh. Balwant Rai Ahuja (appellant herein), Sh. Inder Kumar Ahuja (defendant No.2 therein) and Kusum Madan (mother of the respondents/plaintiffs). Sh. Sahib Ram passed away on 16.06.2002. None of the parties to the lis has set up any testament. No legal document was executed by Sh. Sahib Ram disinheriting Sh. Inder Kumar Ahuja. The admission by one of the respondents/plaintiffs in her self interest or plea of the appellant in this regard is not sufficient to exclude Sh. Inder Kumar Ahuja from inheriting to his father on the basis of natural succession, in view of the provisions of Hindu Succession Act, 1956. Any publication in newspaper qua exclusion of Inder Kumar Ahuja from succession will be of no consequence unless it satisfies the requirements of Section 63 (c) of the Indian Succession Act, 1925. In this view of the matter, contention raised by the appellant that he is entitle to half share in the suit properties by excluding Sh. Inder Kumar Ahuja is not meritorious and accordingly rejected.

The respondents/plaintiffs filed suit for declaration claiming 1/3rd share in the suit property and also sought partition of joint property. No such issue was raised before the Courts that respondents/plaintiffs are liable to pay Court fee to the extent of their entitlement in the suit property for want of possession with them. This apart, the question with regard to payment of Court fee is between the plaintiffs and the State/Court. In the given circumstances, the appellant cannot be heard to say that since the respondents/plaintiffs have not paid Court fee by claiming possession, decrees passed by the Courts are liable to be set aside. The respondents/plaintiffs have been declared to be co-sharers in the suit

property to the extent of 1/3rd share each. Meaning thereby that they have been held to be joint owners of the suit property. As per the settled position in law, every co-owner is deemed to be in joint possession of every inch of joint land even if the same is in exclusive possession of one of the co-owners. However, the co-owner in exclusive possession is entitled to protect his possession unless the other co-owner recover the same in due course of law by seeking partition of the joint property. In this view of the matter, contention of the appellant that suit is not maintainable for want of relief of possession is not tenable.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

FEBRUARY 4, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no