

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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RSA No. 9930 of 2018 (O&M)
Date of decision:5.3.2020

Sukhwinder Pal @ Surinder Pal @ Billa

... Appellant

versus

Krishna Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Dhirinder Chopra, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J. (Oral)

1. This is the second appeal of the defendant in a suit filed by the respondents herein seeking separate possession of the suit property by way of a partition thereof, it being a residential house measuring 5 marlas, fully described in the head note of the impugned judgment of the learned trial court.

Admittedly, the appellant is the son of respondent no.1 and the brother of respondents no.2 and 3, i.e. all the plaintiffs.

2. Upon the pleadings of the parties having been filed, including a replication to the written statement of the appellant, the following issues were framed by the trial court:-

“1. Whether the plaintiffs are entitled to the relief of separate possession as prayed?OPP

2. Whether the plaintiffs are entitled to the relief of 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 and *locus standi* to file the present suit against the defendant? OPD
5. Whether the suit of the plaintiffs is false, frivolous and baseless as the same is based on the concocted facts and the plaintiffs have no right and title to the house in dispute? OPD
6. Whether the defendant is exclusive owner in possession of the disputed house? OPD
7. Relief.”

3. The respondent-plaintiffs examined the first respondent as a witness and tendered documents in the form of *jamabandis* and 'a plaint' by way of exhibited evidence, with certain documents having been referred to by the trial court as marked documents, including an affidavit and complaints moved to the police and the Sub Divisional Magistrate.

The appellant-defendant examined himself and only tendered his affidavit by way of a document.

4. Upon appraising the evidence led, the learned trial court found that though in his examination-in-chief the appellant-defendant had stated that the plaintiffs had no right to the suit property and that it had been given by his father to him and his wife, and in fact the suit had been filed because the father-in-law of his sister, Amandeep Kaur, (respondent no.3 herein), wanted to dispossess the appellant, however, in his cross-examination, he admitted that after the death of his father, he along with the plaintiffs are legal heirs of his father, who had inherited his estate in equal shares.

It was also found by that court that a mutation entry (Ex.P2), showed that the property still stood in joint names that was never partitioned. Hence, essentially on the aforesaid evidence, the suit of the respondent-plaintiffs was decreed in their favour.

5. In the first appeal filed by the appellant, the learned Additional District Judge, Moga, also upon noticing the aforesaid facts, further noticed that admittedly the suit property had been purchased by the father of the appellant, i.e. by Chand Ram, during his life time, vide a registered sale deed dated 19.8.1991 and that the appellant had also admitted that fact, which was also verifiable from the *jamabandi* led by way of evidence (Ex.P2) for the year 2012-13.

It was further noticed by that court that the appellant had admitted in his cross-examination that his father had not executed any Will in his favour and had therefore died intestate, with him further admitting that other than the parties to the *lis*, there was no other legal heir of the late Chand Ram.

The fact that one of the sisters of the appellant, i.e. Swarna Rani (respondent no.2 herein), was not residing on the suit property, was held to be not sufficient to deny her her legal share therein, with it also found that the appellants' mother, i.e. respondent-plaintiff no.1, Krishna Rani, had filed complaints against the appellant before the police and the Sub Divisional Magistrate, to the effect that the appellant and his wife had beaten her up.

Another important fact that was noticed by the learned first appellate court was that the appellant had admitted that he had filed a civil

suit against his mother and sisters which he ultimately withdrew, with a copy of that suit having been marked as Mark A on the case file.

Hence, holding that with the appellant constantly quarrelling with his mother rather than taking care of her, the plaintiffs had a right to seek separate shares in the suit property by a partition thereof by metes and bounds.

Consequently, the first appeal filed by the appellant was dismissed.

Before this court, upon a question put to learned counsel for the appellant, as to what part of the judgments of the learned courts below was perverse or erroneous in any manner as regards even the factual aspect, he has not been able to come up with any answer as regards even the appellants' cross-examination as referred to by the learned courts below, in which he had admitted that his father had not left any Will and therefore had died intestate.

That being so, naturally the suit property is to devolve equally upon on legal heirs of Chand Ram, i.e. the late father of the appellant and therefore the other legal heirs would be within their right to seek a partition thereof. Hence, I see absolutely no ground to interfere with the well reasoned judgments of the learned courts below.

Consequently, this appeal is dismissed *in limine* with costs throughout.

5.3.2020
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No