

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

208

RSA-1812-1991 (O&M)
Date of decision: 24.02.2021

NIHALI AND ORS.

...Appellants

Versus

RAJ KUMAR AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Roopak Bansal, Advocate for the appellants.
Mr. Vikram Punia, Advocate for respondent No.1.
Mr. AS Virk, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (Oral)

Legal heirs of defendant No.3 have filed this regular second appeal against the judgment and decree passed by the learned First Appellate Court while decreeing the suit for joint possession of the property. Smt. Zehro Devi who died on 12.10.1966 was the owner of 22 kanals 12 marlas of land. She left behind three daughters namely Mitra Devi, Tara Devi and Smt. Daropadi Devi. Four sons of Mitra Devi and another person Bikram claimed that Smt. Zehro Devi had bequeathed aforesaid property in their favour. Mutation of the land was sanctioned in favour of the four sons of Mitra Devi and Bikram son of Nauraj Singh. The three daughters of Smt. Zehro Devi named above filed a civil suit for declaration that they are class-I heirs and hence entitled to the property. The aforesaid suit was decreed on 23.04.1973 declaring Mitra Devi, Tara Devi and Daropadi Devi as owners to the extent of 1/3rd share each and the Will was discarded. However, before the decree could be passed, Bikram sold the entire land to Nathu Ram on 26.08.1967. Since Bikram did not inherit any property as per the judgment and decree dated 23.04.1973 hence, Nathu Ram do not get any title on account of the sale deed executed by Bikram.

Thereafter, Mitra Devi allegedly sold the land measuring more than her given share to various persons. Daropadi Devi also sold her share in favour of Nathu Ram.

There was another litigation between the vendees of Smt. Mitra

Devi and Daropadi Devi. The Court declared that all the three daughters were joint owners of 1/3rd share each and the sale of excess share by Smt. Mitra Devi will not affect the rights of other co-owners.

The plaintiff purchased 1/3rd share from the legal heirs of Smt. Tara Devi. After having purchased the land from the legal heirs of Smt. Tara Devi, the plaintiff filed the present suit claiming that he is co-sharers and therefore, entitled to get the decree of joint possession of the property. Learned trial Court dismissed the suit, however, the learned first Appellate Court, as noticed above, decreed the suit by declaring that the plaintiff has become co-owner to the extent of 1/3rd share and he shall be entitled to possession thereof after seeking partition of the joint property.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book as well as the record requisitioned.

Learned counsel representing the appellants has contended that the suit filed by the plaintiff for joint possession was not maintainable as the plaintiff is not in the actual possession. He can seek possession only after partition of the land. Per contra, Sh. AS Virk, learned counsel appearing for respondent No.12 has contended that the First Appellate Court has only granted a declaration that the plaintiff is in joint possession as every co-owner is deemed to be in possession. He submits that in para 26, the First Appellate Court has clarified that the plaintiff will be entitled to physical possession only after seeking partition.

It is apparent that the decree for joint possession is in the nature of declaration and no decree for actual physical possession is passed. Para 26 of the judgment of the First Appellate Court is extracted as under:-

In sequel to the above discussion, the appeal merits acceptance. Resultantly, I accept the appeal, set aside the impugned judgment and decree dated 02.12.1988 of the learned trial Court and decreed the suit of the plaintiff against the defendants for joint possession with respect to 7 kanals and 11 marlas of land being 1/3rd share in the suit land comprise in killa No.12/1,19 and 20 of Rect. No.80. However, it is made clear that the plaintiff would not be entitled to physical possession of any portion of the suit land except

through partition.

Keeping in view the aforesaid facts, no ground to interfere with the well reasoned judgment of First Appellate Court is made out.

Dismissed.

24.02.2021

(ANIL KSHETARPAL)
JUDGE

ashok

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No