

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 549 of 2021(O&M)

Date of Decision: September 14 , 2021.

Anil APPELLANT (s)

Versus

Baljeet and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ajay Kumar, Advocate for
Mr. Sumit Sangwan, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed by the appellant, who was arrayed as defendant No.2 before the learned trial court challenging judgments and decrees dated 10.05.2016 and 15.01.2020 passed by the learned Civil Judge (Junior Division), Charkhi Dadri and learned Additional District Judge, Charkhi Dadri, respectively.

Brief facts necessary for adjudication of the case are that, respondent No.1/plaintiff filed a suit for permanent injunction restraining the defendants from interfering in possession of the plaintiff and his brothers, namely, Balwan

Singh and Sunil over the house as described in the plaint. It is pleaded that the plaintiff and his two brothers, namely, Balwan Singh and Sunil are owners-in-possession of the house in dispute. They are stated to be residing therein and the defendants have no concern with the said property. It is stated that Civil suit for declaration filed by defendants No.1 to 4 had been dismissed on 24.01.1990. It is further averred by the plaintiff that the defendants were residing separately in their own houses. It was alleged that the defendants in connivance with each other threatened to dispossess the respondent/plaintiff from the house in question.

Defendants contested the suit. Various preliminary objections were raised and averments on merits were controverted. Defendants denied that respondent No.1/plaintiff and his brothers, Balwan and Sunil are owners-in-possession of the suit property. It is stated that parties to the suit inherited the house in dispute from their forefather Singha and he had one son, namely, Gangasukh. The property of Gangasukh, it is stated, was ancestral and coparcenary and he partitioned the same during his lifetime. A writing to that effect was also made on 21.05.1979 and as per the said writing, house in question came to the share of respondents/defendants, Jagdish and Hira Lal. It is alleged that Hira Lal executed Will dated 11.09.1984 regarding the said house by taking undue advantage of the old age of Gangasukh. Thereafter, a civil suit for declaration was filed by Rajender (father of present appellant) and Jagdish, which was dismissed in default. Compromise dated 14.01.2014 is also stated to have been arrived at between the parties. Dismissal of the suit was prayed for.

On the basis of the pleadings of the parties, following issues were

framed by the learned trial court:-

1. Whether the plaintiff is entitled to decree for permanent injunction, as prayed for? OPP
2. Whether any family settlement had arrived between the parties? OPP
3. Whether the present suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the suit of the plaintiff is false and frivolous? OPD
6. Whether the plaintiff has no cause of action to file the present suit? OPD
7. Whether plaintiff has concealed the material facts from the court and has not come to the court with clean hands? OPD
8. Whether the plaintiff is estopped by his own act and conduct? OPD
9. Relief.

Evidence was led by both the parties. Learned trial court on considering the facts, circumstances and evidence on record decreed the suit filed by respondent No.1/plaintiff and the defendants were restrained from interfering into the possession of the plaintiff and his two brothers, namely, Balwan Singh and Sunil over the house in question except in due course of law. Appeal was preferred by all the defendants except one Naveen, which was dismissed by the learned Additional District Judge, Charkhi Dadri.

Aggrieved therefrom, present appeal has been filed by only one of the defendants, namely, Anil son of Rajender.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in law and on facts in allowing the suit

filed by the respondent/plaintiff. It is submitted that the plaintiff failed to establish and prove his case on the basis of the evidence on record. Both the learned courts below, it is urged, have proceeded to decide the matter solely on the basis of the testimony of witnesses of the defendants. Learned counsel argues that respondent No.1/plaintiff has to prove his own case and cannot rely upon cross-examination of the witnesses of the defendants. Learned courts below are stated to have wrongly ignored the effect of document (Ex.D1) wherein Gangasukh had divided the house in question into three portions. Moreover, the plaintiff, son of Hira Lal, is stated to be a minor when Gangasukh died. Hira Lal, it is argued, did not file the suit and neither did he come forward to depose in favour of the respondent/plaintiff. Brothers of the plaintiff have also not come forward to depose in his favour. Therefore, suit filed by the respondent/plaintiff has been wrongly allowed by both the learned courts while picking up some stray lines from the cross-examination of the defendant's witness. Learned counsel relies upon judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh v. Nomi Singh and another**, Civil Appeal No.3050 of 2015, decided on 24.03.2015 and decisions of this Court in Rakesh v. Suresh Chand, RSA No.3073 of 2015, decided on 28.01.2020 and Captain Harminster Singh and others v. Lakhbir Kaur @ Jyoti, CR No.34 of 2018, decided on 14.12.2018. It is thus prayed that this appeal be allowed and both the impugned judgments be set aside. Consequently, suit filed by the respondent/plaintiff be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance as well as certain documents circulated on the

WhatsApp group created for the purpose of video conferencing.

Relationship between the parties is not in dispute. Gangasukh, the ancestor of the parties had two wives, namely, Shanti and Manhi. Gangasukh had three sons i.e., Hira Lal (borne by Manhi), Rajender and Jagdish (borne by Shanti). Plaintiff-Baljeet is the grandson of Gangasukh being son of Hira Lal. Plaintiff's specific case is that he alongwith his two brothers, namely, Balwan and Sunil are in possession of the house in question and they have been residing therein, with defendants residing separately in their own houses. Rajender son of Gangasukh is stated to be living separately in the same village whereas Jagdish son of Gangasukh is claimed to be living at Ahmadwas Khera. Their respective sons are stated to be living alongwith them. Present appellant, Anil is the son of Rajender.

Defendants claim the property to be coparcenary which was partitioned by Gangasukh and writing (Ex.D1) in respect thereof was carried out on 21.05.1979. Defendants further averred that Hira Lal by taking undue advantage of old age of Gangasukh managed to get executed Will dated 11.09.1984 in regard to the house in question. However, admittedly Rajender and Jagdish sons of Gangasukh filed a civil suit for declaration which was dismissed in default. Learned counsel for the appellant on a pointed query submits that no further action in this regard was taken by Rajender and Jagdish. However, as has been rightly held by both the learned courts below, the question of title is not a matter of adjudication in the present lis. It is only possession of the plaintiff which has to be determined. It is pertinent to note at this stage that there is no quarrel regarding the preposition that it is incumbent upon the

plaintiff to stand on his own legs and prove his case on the basis of evidence to be led and that plaintiff cannot depend upon the weakness of the defendants, if any. However, in the present case learned counsel for the appellant is unable to deny that defendant witnesses have in no uncertain terms, admitted that Rajender and Jagdish sons of Gangasukh were residing separately from Gangasukh. Gangasukh was admitted to be residing with Balwan and Baljeet (plaintiff) and he died in the house in dispute. Sons of Shanti i.e., defendants No.1-Rajender and 4-Jagdish are admitted to be residing elsewhere. Defendant-Jagdish is admitted to be residing in village Ahmadwas Khera since a number of years and defendant-Rajender son of Gangasukh is admitted to be residing in a house constructed on agricultural land. In this respect, learned trial court has specifically observed as under:-

“XX XX XX XX

It is admitted fact that Gangasukh had two wives namely Shanti and Manhi. Defendants Rajender and Jagdish are sons of Shanti. Hira Lal (father of plaintiff) was son of Manhi. DW-1 Yadwender Singh has deposed in his cross-examination that Gangasukh was residing with Balwan and Baljeet. Gangasukh died in the house in dispute. He does not know whether Jagdish is residing at Ahmadwas in Loharu since last 25 years. Dw-2 Karan Singh has deposed in his cross-examination that Jagdish is residing in village Ahmadwas Khera since last 10-15 years. Gangasukh was residing with Balwan and Baljeet, and he died in the house in dispute. Further deposed that sons of Manhi (grandmother of plaintiff) are residing in the house in dispute, and sons of Shanti are residing in other house. DW-3 Vijay Singh has deposed in his cross-examination that Rajender has constructed house in the agricultural land and residing therein. Further deposed that Gangasukh died in the house in dispute and he

was residing with Sunil, Balwan and Baljeet. DW-4 Virender Singh has admitted in his cross-examination that Manhi and Gangasukh were residing in the house in dispute. Gangasukh died in the said house. Plaintiff and his brothers Balwan and Sunil are residing in the said house. He has further admitted that Shanti wife of Gangasukh was residing in other house with her sons. Jagdish defendant with his children is residing in village Ahmadwas Khera from last 14-15 years. He has admitted that plaintiff, Balwan and Sunil have made two shops in the house in dispute.”

Present is a case where there is a specific admission of the averments. Therefore, it cannot be said that the impugned judgments have been rendered merely with reference to the testimony of defendant witnesses or that the plaintiff failed to prove his exclusive possession over the suit property. The plaintiff has duly deposed as PW1 before the learned trial court. The writing (Ex.D1) in respect of which DW1 Yadwender Singh was examined by the defendants has been duly considered. Present appellant, who had deposed as DW6 has also stated that defendant-Jagdish was residing at Ahmadwas Khera with his family members. It is specifically observed by the learned Additional District Judge, Charkhi Dadri that as per the writing (Ex.D1), no share in temporary partition was allotted to Rajender with Jagdish being proved to be residing at Ahmadwas Khera. Exclusive possession of the plaintiff alongwith his brothers stood proved keeping in view the evidence on record coupled with cross-examination of the defendant witnesses. Learned counsel for the appellant is unable to point out any evidence on record to render this finding to be incorrect. Judgments relied upon by learned counsel for the appellant are not applicable in the given factual matrix.

Both the learned courts below have returned concurrent findings of fact after correct and proper appreciation of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 10.05.2016 and 15.01.2020 passed by the learned Civil Judge (Junior Division), Charkhi Dadri and learned Additional District Judge, Charkhi Dadri, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

September 14, 2021.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No