

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.181 of 2019 (O&M)

DATE OF DECISION: APRIL 30, 2021

BALJINDER KAUR & OTHERS

...APPELLANTS

VERSUS

KULWANT KAUR & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. NAVEEN KUMAR, ADVOCATE FOR THE PETITIONERS.
MS. AMBIKA BEDI, AAG, PUNJAB.

MANOJ BAJAJ, J.(ORAL)

The appellants(plaintiffs) have filed this Regular Second Appeal to challenge the judgment and decree dated 06.07.2018 passed in Civil Appeal No.71 of 3.3.16 by the first appellate Court, whereby the judgment and decree dated 04.02.2016 passed by Civil Judge (Junior Division), Kharar in Civil Suit No.RT-478/12.12.11/27.9.2013, dismissing their suit for separate possession by way of partition alongwith permanent injunction, was upheld.

Briefly, the facts of the case are that the plaintiffs brought a suit for partition and permanent injunction on the ground that the properties in dispute were owned by Mangal Singh son of Hira Singh, grandfather of the plaintiffs and defendants No.2 to 4, and father-in-law of defendant No.1. After his death, the property in question devolved upon his four sons, Pritam Singh (father of plaintiffs), Charan Singh (husband of defendant No.1 and father of defendants No.2 to 4), Naranjan Singh (father of defendants No.5 and 6) and Ran Singh by way of natural succession in

equal shares, i.e. 1/4th share each. The share of Ran Singh was also inherited by plaintiff No.4 on the basis of a registered Will dated 23.12.1997. According to the plaintiffs, as the suit property has not been partitioned, therefore, they are unable to utilize it to its potential, and the request made by the plaintiffs to the defendants for partition of the suit properties was refused, who further threatened to alienate the properties. Previously, Pritam Singh, and plaintiff No.4 had filed a suit for partition, but during the pendency of the suit, Pritam Singh had expired on 20.10.2007 and after his death, Charan Singh compromised the matter with the plaintiffs and agreed to partition the land. Later on, Charan Singh also expired on 11.3.2008 and as a result of that, the suit was dismissed in default on 2.9.2008. It was prayed that the suit be decreed.

The suit was contested by defendants No.1 and 2 by filing separate written statements by raising few preliminary objections regarding *locus standi* and maintainability of the suit, in view of the bar contained in Order 2, Rule 2 CPC, and though on merits the relationship between the parties was admitted, but it was pleaded that the partition regarding share of the parties to the suit was decided long back and each party is in separate possession of their respective share. It was prayed that the suit be dismissed.

The plaintiffs filed replication to controvert the defence set up by the defendants and after considering the pleadings, the trial Court in all framed six issues. Thereafter, the parties led their respective evidence and after considering the same, the trial Court vide judgement and decree dated 04.02.2016, dismissed the suit.

Aggrieved against the judgement and decree dated 4.2.2016,

the appellants preferred first appeal before the Addl. District Judge, SAS Nagar, Mohali, and the appellate Court also decided the appeal against the appellants through the impugned judgement and decree dated 6.7.2018. The said decree is under challenge in the present regular second appeal.

Learned counsel for the appellants has argued that since the parties are descendants of Mangal Singh and after his death, the suit property left behind by him is held by them jointly, and as the rights of the appellants are not disputed, therefore, the suit property deserves to be partitioned. Learned counsel has further argued that Courts below have proceeded to adjudicate the issues raised by the appellants on the basis of the oral evidence and no local commissioner was appointed by the Court to inspect the property in question. Learned counsel submitted that the deposition of DW-3, Harjant Singh, who is neighbour of the parties has been ignored while dismissing the claim of the appellants, therefore, the impugned judgment and decree passed by the trial Court is not based upon correct appreciation of evidence. According to him, the appellate Court has also failed to appreciate the material evidence on record and wrongly proceeded to uphold the judgment and decree passed by the trial Court. He submits that the impugned judgment and decree dated 6.7.2018, passed by the Addl. District Judge, SAS Nagar, Mohali warrants interference through this Regular Second Appeal.

After hearing learned counsel for the parties, this Court finds that the parties are closely related, being descendants of Mangal Singh and there is no conflict between the parties regarding their rights in the properties in question. A careful perusal of the judgment passed by the Civil

Judge (Junior Division), Kharar reveals that the testimony of plaintiffs Sukhwinder Kaur (PW-1) and Inderjit Kaur (PW-4) were carefully examined by the trial Court to arrive at a conclusion that they suffered vital admissions regarding oral partition between the parties which took place long back. As per this evidence, the parties to the suit implemented the same and are already enjoying their respective separate possession. It is settled law that admission is the best piece of evidence which can be used against a party and since the plaintiffs have not disputed this fact that the oral partition took place, therefore, their claim for partition of suit property is without any merit.

The argument of learned counsel that no local commissioner was appointed by the trial Court when the suit was pending is without any merit as the onus to prove the claim raised in the suit was upon the plaintiffs, who not only failed to lead any evidence on this material issue, but admitted the defence of the defendants. Even otherwise, the appointment of local commissioner cannot be made to collect the evidence for a party. The other argument of the learned counsel that the evidence of DW-3 was not carefully considered by the Courts below while dismissing the suit of the plaintiffs, is also without substance, as the plaintiffs i.e. PW-1 and PW-4 have themselves admitted the defence of the defendants relating to previous partition of the property amongst the shareholders. Thus, this Court has no hesitation in holding that the findings returned by the trial Court on material issues, and further upheld by the appellate Court are based upon proper appreciation of evidence and material on record.

The regular second appeal does not involve any substantial

question of law, and consequently does not warrant interference.

Dismissed.

Pending Misc. application(s), if any, are also dismissed as infructuous.

April 30, 2021
Vanita/Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No