

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

109

**RSA-1362-2020 (O&M)
Date of decision: 08.08.2022**

Zile Singh and ors.

.....Appellants

Versus

Nafe Singh (since deceased) through LRs and ors.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vikram Punia, Advocate for the appellants.

MANJARI NEHRU KAUL, J. (ORAL)

A suit for partition with consequential relief of permanent injunction instituted by the plaintiff was decreed by the trial Court vide order dated 23.02.2016. The appeal preferred to impugn the judgment and decree of the trial Court was dismissed by the lower appellate Court on 14.02.2020. Defendants No.1 to 3 and 6 to 9 are now before this Court in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original positions in the suit.

As per the pleaded case of the plaintiff, both the plaintiff and defendants belong to the same Joint Hindu Family and are co-sharers in the property comprised in Khewat No.217/199, Khata No.269, Rectangle and Killas No.23//26, 80//26, 135, 136 and 252, total measuring 3 Kanals 1 Marlas, situated in the Abadi of Village Nandnaur, Sonapat (hereinafter referred to as the 'suit property'). The plaintiff claims to be share holder to the extent of 1/6th share in the suit property. Defendant No.6 Rajinder constructed his house over the suit property marked by letters 'ABCD' and defendants No.1 to 3 namely

Zile Singh, Dewan Singh and Rajbir had constructed their houses over the suit property marked by letters 'CDEF' in the site plan. Another portion of the suit property marked by letters 'JKLM' and 'NOPQ' in the site plan was stated to be in the occupation of defendants No.6 to 10 i.e. legal representatives of Ram Chander. The defendants allegedly raised construction beyond their shares over the land. The plaintiff asked the defendants in vain for his 1/6th share in the suit property. Resultantly, the plaintiff was left with no other option but to file the suit in question.

In their joint written statement, defendants refuted the averments made by the plaintiff and rather submitted that the plaintiff and the defendants were not in joint possession of the suit property and hence not co-sharers. It was asserted that after the suit property had been partitioned, the owners of the suit property had constructed their houses thereupon to the extent of their respective shares. It was also asserted that the suit in question was not maintainable as it was hit by the principle of *res-judicata* as a previous civil suit filed by the plaintiff was dismissed on 16.07.2013 and thereafter the appeal preferred against the said judgment and order was also dismissed on 26.11.2014.

On the basis of material and other evidence led, both the Courts below did not find any merit in the submissions of the defendants as no evidence was led by them in support of the suit property having been ever partitioned. Still further, it was held by the Courts below that merely because some co-sharers were in physical possession of separate portions of joint property, an inference could not be drawn qua the suit property having been partitioned.

Learned counsel for the appellants/defendants No.1 to 3

and 6 to 9 has vehemently argued that both the Courts below gravely erred in not appreciating and taking into account that the suit filed by the plaintiff was barred under Order 2 Rule 2 of the Code of Civil Procedure, 1908 (for short, 'the Code') as the plaintiff had filed a suit for permanent injunction in respect of the suit property prior to the suit in question and the same was dismissed vide judgment (Ex.P.5). He submitted that a perusal of the plaint in the previously instituted suit i.e. Ex.DA, left no manner of doubt that the pleadings therein, cause of action and the relief sought were identical to the suit in question. It was submitted that since the relief of permanent injunction sought by the plaintiff in the instant suit as well as in the previous suit, pertained to the same suit property, the relief of partition had all along been available to the plaintiff, even at the time of institution of the earlier suit, and hence the suit was clearly barred by the provisions of Order 2 Rule 2 of the Code.

I have heard learned counsel and perused the relevant material on record.

No doubt, it has been vehemently argued and urged by learned counsel for the defendants that a previously instituted suit by the plaintiff for permanent injunction in respect of the suit property had been dismissed and still further, it stood revealed as per the suggestions given by the plaintiff himself to DW.1 Dewan Singh i.e. defendant No.2 and DW.3 Ram Mehar that they had constructed their houses on the suit property to the extent of their respective shares. However, it would be most relevant to note that in the previously instituted suit, the defendants in their written statement, Ex.P.7, had denied the partition of

the suit property and rather asserted that it was owned and possessed jointly by all the co-sharers. It is thus obvious that the stand taken by the defendants in the instant case is at complete variance with the earlier stand taken by them and it would be thus erroneous to conclude that it stood established that the joint property had been mutually partitioned, as urged by the learned counsel. The contention of the learned counsel qua the suit being barred under Order 2 Rule 2 of the Code is also devoid of merit. It cannot be overemphasized that the cause of action for partition being an independent one would not preclude any member of a Joint Hindu Family from filing a suit for partition. Partition being a recurring cause of action would not be thus hit by the doctrine of *res-judicata*. There cannot be any bar to the number of suits which may go on between the members of a Joint Hindu Family qua joint family property and even between co-owners with regard to joint property. A suit for partition would always be an independent and separate cause of action as and when some co-sharer or members of a Joint Hindu Family would want to discontinue with joint ownership. Moreover, it would be pertinent to observe that the correctness of the shares of the parties to the suit as recorded in the jamabandi of the suit property (Ex.P.2) has not even been challenged by the defendants. In the circumstances, the parties to the suit would stand entitled to their respective shares in the suit property as per the entries in the jamabadi (Ex.P.2).

On being pointedly asked, learned counsel for the appellants/defendants No.1 to 3 and 6 to 9 failed to bring to the notice of this Court anything on record to show that the conclusions arrived at

by both the Courts below were either contrary to record or suffered from any material illegality. In the circumstances, this Court does not find any error in the concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

08.08.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No