

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.265 of 2022 (O&M)

Reserved on : 31.05.2022

Date of Decision : 04.07.2022

Nawal Kishore

....Appellant

VERSUS

Smt. Radha and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Adarsh Jain, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellant against the judgments and decrees dated 20.02.2019 and 16.03.2021 passed by the Courts below whereby the suit for partition and permanent injunction filed by the plaintiff-respondents has been decreed.

The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for partition by metes and bounds and for permanent injunction averring therein that the suit property was joint between the parties and share of the plaintiff-respondents was to the extent of half share and that of the defendant (appellant herein) was to the extent of half share. It is pleaded that the previous owner, Ami Chand son of Bhagmal, was owner in possession of the suit property and that Ami Chand was married to Budhi and thereafter went missing for 7 years. Budhi, thereafter, married a cousin of Ami Chand and from the loins of Budhi and Jiwan (cousin of Ami Chand), Net Ram was born. Gianender i.e. predecessor-in-interest of plaintiff-respondents, was the son of Net Ram. Ami Chand thereafter returned back home and joined his matrimonial life and from Ami Chand

and Budhi, Nawal Kishore was born. Nawal Kishore is the defendant-appellant herein. Ami Chand executed a relinquishment deed in favour of Gianender to the extent of his half share and got the same registered in the office of Sub Registrar, Hodal vide *vasika* no.2280 dated 31.12.2003. It is further pleaded that the defendant-appellant filed a suit for declaration and permanent injunction against Gianender, predecessor-in-interest of the plaintiff-respondents, titled “Nawal Kishore vs. Gianender etc.” challenging the relinquishment deed being invalid. Vide judgment and decree dated 29.02.2012 the relinquishment deed was held to be valid and genuine and Gianender, predecessor-in-interest of the plaintiff-respondents, and the defendant-appellant herein were held to be co-sharers in the suit plot to the extent of half share each. Aggrieved by the said judgment and decree dated 29.02.2012 an appeal was preferred by Gianender. However, the same was withdrawn at a later point of time and, thereafter, the said judgment and decree attained finality inasmuch as the same was not challenged by either side. It is further pleaded in the plaint that the defendant-appellant was bent upon dispossessing the plaintiff-respondents from the suit property and was interfering in their peaceful and lawful possession since the suit property was still joint and hence a decree for partition was sought.

Upon notice, the defendant-appellant filed his written statement averring that he was in possession of the suit property and that the plaintiff-respondents have already been restrained in the earlier suit from dispossessing him. It was also averred that it had already been held in the earlier litigation in Civil Suit No.111/1 of 2005 titled “Nawal Kishore vs. Gianender and Others” that the plaintiff-respondent no.1 procured a sale

deed 01.09.2005 in her favour from Ami Chand regarding the entire suit property and got the same registered in the office of the Sub Registrar on the same very date. In the said suit, the sale deed was held to be illegal, null and void and not binding on the rights of the parties being hit by the principal of *lis pendens*.

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

1. Whether the plaintiff is entitled to a decree for partition by way of metes and bounds as prayed for? OPP
2. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no *locus standi* and cause of action to file the present suit? OPD
5. Whether the plaintiff has not come with clean hands and has suppressed the true and material facts from the Court? OPD
6. Whether the plaintiff is estopped by his own act and conduct by filing the present suit? OPD
7. Relief.

Vide judgment and decree dated 20.02.2019 the Trial Court, on the basis of pleadings of the parties and the evidence on the record, decreed the suit of the plaintiff-respondents and passed a preliminary decree for partition holding the plaintiffs and defendant to be owners to the extent of half share each in the suit property and further granted a decree for permanent injunction restraining the defendant-appellant from carrying out any construction in more than his share and changing the nature of the suit

property till final partition of the suit property. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the defendant-appellant which was dismissed vide judgment and decree dated 16.03.2021. Aggrieved by the judgments and decrees passed by both the Courts below, the present regular second appeal has been preferred by the defendant-appellant.

Learned counsel for the defendant-appellant has vehemently contended that the Courts below have erred in decreeing the suit of the plaintiff-respondents inasmuch as the plaintiff-respondents themselves had not accepted the relinquishment deed dated 31.12.2003 after the death of Gianender and even after passing of the judgment dated 29.02.2012 in the suit filed by Nawal Kishore (the defendant-appellant) as thereafter a sale deed dated 01.09.2005 was set up which was eventually set aside vide judgment and decree dated 18.09.2015 passed in Civil Suit No.525 of 2013 titled “Nawal Kishore vs. Smt. Radha and Another”.

I have heard learned counsel for the defendant-appellant.

In the present case the undisputed facts are that Ami Chand was the owner of the suit property and vide registered relinquishment deed dated 31.12.2003 (Ex.PW1/A) he relinquished his half share in favour of Gianender, the predecessor-in-interest of plaintiff-respondents. The said relinquishment deed was challenged by none other than the defendant-appellant and vide judgment and decree dated 29.02.2012 (Ex.PW2/A) the relinquishment deed was held to be genuine and valid. However, Gianender, the predecessor-in-interest of plaintiff-respondents, and the defendant-appellant herein were held to be co-sharers as to the extent of half shares. An

appeal against the said judgment and decree was preferred by Gianender. However, the same was subsequently withdrawn. Hence, the said judgment and decree dated 29.02.2012 attained finality. The case of the defendant-appellant that the said relinquishment deed was never acted upon would be of no avail inasmuch as the same was challenged by him and the relinquishment deed was upheld vide judgment and decree dated 29.02.2012. Merely because the sale deed in favour of Radha executed by Ami Chand was set aside subsequently in a suit filed by the defendant-appellant vide judgment and decree dated 18.09.2015 (Ex.DW1/A), it cannot be held that the relinquishment deed was illegal, null and void. There is no other evidence on the record to show that the plaintiff-respondents were not entitled to the half share relinquished in favour of Gianender by Ami Chand. Learned counsel for the defendant-appellant has not been able to point out any other evidence on the record to show that Gianender was not the owner of the suit property to the extent of half share.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.07.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO