

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3946 of 2019 (O&M)

Date of decision : 6.12.2022

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Raja Singh

.....Appellant

vs.

Gajjan Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the appellant.

...

H. S. Madaan, J. (Oral)

1. Briefly stated facts of the case are that, plaintiff – Gajjan Singh had filed a suit against defendants- Daljit Singh, Malkiat Singh, Manjit Singh, Bhajjan Kaur @ Harbhajan Kaur, Raja Singh, Amarjit Singh and Malkiat Singh, seeking possession of 3/12 share by way of partition of the house fully detailed in head note of the plaint and house situated within redline of village Sohana, District SAS Nagar, in addition to that craving for grant of permanent injunction restraining the defendants from making any type of construction over the suit property without getting it partitioned and further restraining the defendants from alienating in any manner, any specific portion and more than their share out

of the suit property or from changing its nature.

2. As per case of the plaintiff, he alongwith defendants are owners in possession of the house in suit. On account of jointness, the parties are unable to enjoy the property properly, as such the plaintiff, desirous of getting his share partitioned, had brought the suit in question on 29.3.2014.

3. Upon notice, defendants No. 1 to 5, put in appearance. Defendants no. 1, 2, 3 and 5 filed written statement contesting the suit, denying the averments made in the plaint. Such defendants came up with the version that the suit property is not joint between the parties. According to the answering defendants all the properties were orally partitioned amongst all the co-sharers/co-owners about 25-30 years previously and separate shares were allotted to the owners, of which they came in exclusive possession, raising construction over such shares in the form of residential houses. The parties are separate in mess and residence since then. The property is in exclusive possession of defendant No.5, who had got installed an electric meter therein, in the name of his son. The possession of the said village *abadi* property which was lying vacant, was taken over by defendant no.5 about 30 years back. However, plaintiff, by taking benefit of wrong entries in the *jamabandi*, had brought the present suit. Such defendants prayed for dismissal of the suit.

4. Defendant No.4 adopted the written statement filed on behalf of defendants No. 1, 2, 3 and 5, by making statement on

19.1.2015.

5. However, in the written statement filed by defendants No. 6 and 7, they admitted the claim of the plaintiff submitting that the suit be decreed as prayed for.

6. Plaintiff filed the replication controverting the allegations in the written statement filed by the contesting respondents, reiterating the averments in the plaint.

7. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled for possession by way of partition of suit property, as prayed for ? OPP
2. Whether the plaintiff is entitled for permanent injunction, as prayed for ? OPD
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Relief.

8. The parties were afforded adequate opportunity to lead evidence in support of their respective claims.

9. In order to prove his case, plaintiff -Gajjan Singh, himself stepped into witness box as PW-1 and further examined Gian Chand Architect as PW-2. With that the evidence of the plaintiff was closed.

10. In rebuttal, defendant - Raja Singh appearing as DW-1 reiterated the case of the contesting respondents. With that the evidence of the contesting respondents was concluded.

11. After hearing the arguments, the trial Court decided

issues No. 1 and 2 in favour of the plaintiff. Issue No. 3 was also decided in favour of the plaintiff and against the defendants. Resultantly, the suit of the plaintiff was decreed and he was found entitled to possession of 3/12 share by way of partition of the suit property. Defendants were permanently restrained from raising any type of construction over the suit property unless the suit property is partitioned by metes and bounds, as well as from alienating specific portion and more than their share out of the suit property and further from changing the nature of the suit property till final partition.

12. Defendant Raja Singh had challenged the judgment and decree dated 12.12.2016, passed by the trial Court, by way of filing an appeal before District Judge, SAS Nagar, Mohali, which was assigned to Additional District Judge, SAS Nagar, Mohali, who vide judgment dated 30.5.2019, affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

13. Still feeling dissatisfied, Raja Singh has approached this Court by filing the present regular second appeal.

14. When the appeal was taken up on 21.8.2019, counsel for the appellant was directed to produce document of title qua Khasra Nos. 720 and 721, with regard to alleged joint holding of the parties, clarifying that in case failure to do so, an adverse inference would be drawn against the appellant and findings of both the courts below that the property was self acquired, would be upheld.

15. On the adjourned date i.e. 19.9.2019, counsel for the appellant placed on record certain documents, Annexures A-1 to A-8

and requested for an adjournment. The case was adjourned to 20.1.2020 for consideration. Learned counsel for the appellant took further adjournment to address the arguments. Vide order dated 20.1.2020, it was observed that no further adjournment shall be granted and on the next date of hearing the case shall be considered and decided irrespective of the fact whether counsel for the appellant comes present to argue the case or not. The case was then adjourned to 20.3.2020. On the date fixed 8.8.2022, the appeal went unrepresented. Similar was the position on the next date of hearing fixed as 22.9.2022 and then on 10.10.2022 and even today, counsel for the appellant has not opted to appear.

16. I have gone through the record and I find that both the Courts on proper analysis of evidence and correct interpretation of law have returned concurrent findings that plaintiff is co-owner to the extent of 3/12th share in the suit property and the property being joint, he has got a right to get his share separated by getting it partitioned by metes and bounds. The plea raised by the contesting defendants that the property has already been partitioned and defendant No.5 Raja Singh is in exclusive possession of the suit property as owner, since it was allotted to him during partition, was rejected, observing that the contesting defendants have failed to establish those assertions.

17. The plea raised by the plaintiff that defendants were threatening to raise construction over the suit property without getting it partitioned and to alienate the specific portion there from

and that too more than their share and further they were trying to change its nature, was found to have force and resultantly, the suit of the plaintiff was decreed and appeal filed against the judgment and decree passed by the trial Court was dismissed by the Ist Appellate Court.

18. Both the judgments are quite detailed one, well reasoned and do not suffer from any illegality or infirmity. I do not find any reason to interfere with such judgments. No substantial question of law or fact, arises in this case.

19. The appeal is found to be without any merit and is dismissed accordingly.

6.12.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No