

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1453-2021(O&M)

Reserved on: 18.07.2022

Date of decision: 02.08.2022

SUDHA AND ORS.

..Appellants

Versus

SAROJ BALA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Brijender Kaushik, Advocate
for the appellants.

ANIL KSHETARPAL, J.

1. The plaintiffs assail the correctness of concurrent findings of fact arrived at by the Court below, while dismissing their suit for grant of decree for separate possession by way of partition along with decree for grant of permanent injunction.

2. Some peculiar facts are required to be noticed.

3. As per the case of the plaintiffs Sh. Gaiinda Ram had three sons namely Sh. Lachman Dass, Sh. Punnu Ram and Sh. Bakhtawar, who separated from his father a long ago, however, Sh. Lachman Dass and Sh. Punnu Ram remained joint with their father. Sh. Lachman Dass's wife died somewhere in the year 1940. It is the case of the plaintiff that the property bearing No.133/6, Nayabans, Ambala City and property No.715, 716, 717, 718/6, Block-6, Railway Road, Ambala City, were kept and maintained jointly by Sh. Lachman Dass and Sh. Punnu Ram and the aforesaid properties were the joint Hindu family property (ancestral property) in the hands of Sh. Lachman Dass and Sh. Punnu Ram. Sh. Lachman Dass was issueless, whereas, Sh. Punnu Ram had four sons and one daughter namely

(i) Sh. Kamal Sain @ Sh. Kanwar Sain, (ii) Sh. Raj Kumar, (iii) Sh. Surinder Mohan, (iv) Sh. Manoj Kumar and (v) Smt. Raj Bala. Sh. Punnu Ram is stated to have died in the year 1982-83, whereas, his wife predeceased him. Sh. Manoj Kumar is stated to have died unmarried 20 years back, whereas, Sh. Surinder Kumar died in the year 2002, leaving behind the defendant No.1, 2 and 3, as his legal heirs. Sh. Raj Kumar is stated to be missing since 1985, whereas, his wife Smt. Jiwan Lata and her children (son and daughter) left Ambala City in the year 1986 and their whereabouts are not known until today. Sh. Kamal Sain @ Sh. Kanwar Sain was alleged to have been adopted by Sh. Lachman Dass, who was issueless. Sh. Kamal Sain married to defendant No.5 and defendants No.6 to 8 are his sons from Smt. Chanderkanta. The plaintiff No.1 claims to be the second wife of Sh. Kamal Sain while plaintiffs No.2 and 3 are their children. The plaintiffs are stated to be residing on the first floor of the property bearing No.715/6, Railway Road, Ambala City. Sh. Lachman Dass during his lifetime filed a suit for possession of the property at Nayabans, Railway Road, Ambala, against the plaintiffs, which was dismissed on 09.03.2000. The appeal filed by Sh. Lachman Dass was dismissed on 22.09.2001. The plaintiffs claim to be residing as owners and they prayed for the decree of partition of the various suit properties. The defendants contested the suit claiming that the properties are separate from the suit properties. The plaintiffs failed to produce any documentary evidence to prove that the properties were joint Hindu family and ancestral properties. In fact, both the Courts have noticed that the plaintiffs failed to produce any document to prove that they are the owners in possession of the said property. The defendants have also produced on record the municipal record of the property tax. The plaintiff No.1 also failed to prove that she was married to

Sh. Kamal Sain. The learned counsel representing the appellant though made a sincere attempt, however, failed to draw the attention of the Court to any substantive error in the judgment. It may be noted here that the plaintiffs produced a copy of the judgment, decree, and also the copies of the applications filed to the Municipal Committees, death and matriculation certificate etc., but however, failed to produce any evidence to prove that the property, partition whereof has been sought, is a joint Hindu family ancestral property required to be partitioned. Before claiming partition of the suit property, the plaintiffs were required to prove that Kamal Sain had a share in the suit property. Further, they were required to prove that the suit property was the ancestral (joint Hindu Family) property.

4. In view thereof, no ground to interfere is made out.
5. Dismissed.
6. All the pending miscellaneous applications, if any, are also disposed of.

02nd August, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*