

**101+205 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-5183-2017 (O&M)

CM-1971-C-2020

Date of Decision: 10.02.2022

SUKHPAL AND ANOTHER

...Appellants

Versus

PARTAP SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S.K. Aggarwal, Advocate
for the appellants.

Mr. R.S. Panghal, Advocate
for respondent No.1.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, the defendants are in second appeal before this Court assailing the
trial Court judgment and decree dated 13.11.2015 as upheld by learned First
Appellate Court vide its judgment and decree dated 01.09.2017.

3. Briefly stated, facts as noticed by Courts below are that plaintiff
/respondent No.1 instituted a suit for possession by way of partition claiming
that the parties to the present suit were successor-in-interest of
Sh. Chandgi Ram son of Sh. Hari Ram and they belong to the same family.
Averments, *inter alia*, are/were that Sh. Chandgi Ram son of Sh. Hari Ram
was succeeded by his six sons and he divided all his property amongst them
by way of a family settlement. In the said settlement, a plot measuring 98.22

square yard and a house measuring 24 square yard, situated within *abadideh* of Village Mithathal, Tehsil and District Bhiwani fell into the share of one Sh. Nathu Ram, who died in the year 1988 as unmarried and issueless. The plaintiff and the defendants were the only legal heirs of late Nathu Ram and they received the suit property in succession according to their shares jointly and no partition so far has been effected of the same, thus, the plaintiff is entitled to get the suit property partitioned being one of the share holders. The plaintiff was restrained from the use of the suit property, whereas, as per the succession, he is the joint owner in possession upto the extent of 1/3rd and is entitled to get his share separated from the defendants. Upon notice, the defendants appeared and filed their joint written statement, stating therein, that the suit is bad for non-joinder and mis-joinder of parties and the plaintiff has no locus-standi to file the present suit. They further stated that the land came to the share of Sh. Prabhu Ram and Nathu Ram was distributed amongst three other brothers during their life time, whereupon, the houses were constructed by their respective brothers and the house, in dispute, came to the share of Sh. Jage Ram, the father of the defendants and late Nathu Ram was looked after by the defendants during his life time.

4. Based on the rival pleadings, following issues were framed:

- 1. Whether the plaintiff is entitled to the relief of possession by way of partition of the suit properties?OPP*
- 2. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD*
- 3. Whether the present suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
- 4. Whether the present suit is not maintainable in the present form?OPD*
- 5. Relief.*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, trial Court decided issue Nos.1 to 4 in favour of the plaintiff and against the defendants.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this court.

8. Learned First Appellate Court while re-appreciating the evidence, *inter alia*, gave valid reasons as below :-

“15. As is clear in the mind of the Court that the defendants could not produce any document with regard to providing the suit property by late Nathu Ram to them. This way, indirectly their stand is that the suit property was gifted to them. As per the settled law enshrined under section 123 of the Transfer of Property Act, the gift of immoveable property must be effected by registered instrument signed by or on behalf of donor and it must be attested by atleast two witnesses. This way, in these circumstances, if it was gifted property in the hands of the defendants by late Nathu Ram then it was to be effected only through a registered instrument which the defendants evidently failed to produce before this Court.

16. Now, turning towards the other evidence came on the case file wherein plaintiff Pratap has been examined as PW1 who has admitted that his father had divided the properties situated within lal-dora amongst all his five brothers including himself in equal shares and houses were constructed thereupon. The factum of the said partition by late Chandgi Ram is also not disputed by the defendants as is clear from their pleadings. Further, the partition made by late Chandgi Ram during his life time amongst his five sons, is also not agitated by the defendants, rather the parties to the suit are in dispute only with regard to the share of late Nathu Ram situated within lal-dora of the village. This fact further proves that infact, late Chandgi Ram had divided his properties situated within the lal-dora amongst his five sons. It is proved from the evidence that late Nathu Ram was unmarried. PW1 though has stated that defendant Rajpal has forcibly constructed his house over the suit property by possessing this land forcibly.

17. Now, turning towards the evidence brought through the deposition of the defendants wherein defendant Sukhpal has admitted the fact that the dispute property had come to the share of Nathu Ram who was his uncle (Tau). He also admitted that the suit property came to the share of late Nathu Ram remained unpartitioned, though, he admitted his possession over the suit property which per his version was given to them by late Nathu Ram during his life time as he was

served by the defendants. Apart from the disputed house, nothing else was given by late Nathu Ram to the defendants. Nathu Ram had suffered a Court decree qua his agriculture land amongst his three brothers including plot having revenue numbers i.e. Khadda-Khad. He also admitted that the Panchayat was convened in connection with the suit property and a compromise was written in that Panchayat. In that Panchayat, Sarpanch Dharambir and Satbir were also present which compromise was written on a paper. However, he was not aware as to whether his brother Rajpal had also signed on that compromise or not. He also admitted that the land which Nathu Ram had given to them i.e. the dispute property, no writing was executed to that effect and it was given orally. No person had collected to that effect. This Court has also perused the deposition of DW2 Manphool who is a co-villager of the parties.

18. The plaintiff through his evidence has been able to bring in evidence a writing Ex.PW3/B/Ex.P2 which is signed by Dharambir Sarpanch and Satbir Singh. This document is also signed by Rajpal. Meaning thereby, the said document is the same compromise which has been admitted by DW1 Sukhpal. The said compromise, thus, has been proved by the plaintiff to have been effected before Panchayat. This admission of the defendant Sukhpal supports the stand of the plaintiff that the suit property, which is the house of Nathu Ram covering an area of 98 square yards, was not given by Nathu Ram to the defendants exclusively. This document coupled with the deposition of DW1 further proves on the record that late Nathu Ram had died intestate qua his properties situated within the lal-dora of the village.

19. In the light of the above discussion, this Court has come to this conclusion that late Nathu Ram had died intestate who per the admission of the parties was unmarried and issueless. It is also not disputed even by the defendants that at the time of death of late Nathu Ram, his remaining three brothers namely Pratap Singh (plaintiff), Jage Ram (the father of the defendants) and Amar Singh (the father of the proforma defendants) were alive. This way, as per Hindu Succession Act, the property left by Nathu Ram was legally to be devolved upon his remaining legal heirs who were none other but his three brothers namely Pratap Singh (plaintiff), Jage Ram (the father of the defendants) and Amar Singh (the father of the proforma defendants) in equal shares i.e. $1/3^{rd}$ each. In these circumstances, this Court has found force in the stand taken by the plaintiff qua the relief sought through his plaint. Thus, this Court has reached at the conclusion that the learned trial Court has rightly decided issue No.1 in favour of the plaintiff and the suit of the plaintiff further has been rightly decided in favour of the plaintiff.”

9. I have heard the learned counsel and perused the judgments of both the Courts below.

10. To my mind, judgments under challenge have been rendered after due and correct appreciation of cogent evidence adduced by the respective parties.

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

12. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

14. Pending application/s, if any, shall also stand disposed of.

15. No order as to costs.

February 10, 2022
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No