

RSA-3914-2019 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

RSA-3914-2019 (O&M)
Decided on : 12.09.2023

Ajit Kumar Verma @ Gopal Krishan

. . . Appellant(s)

Versus

Balram Kumar Verma and Ors.

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. R.K. Choudhary, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA) has been filed by defendant No.1 – Ajit Kumar Verma @ Gopal Krishan (appellant herein), against the concurrent finding of decreeing the suit partially, for the purpose of partition of the property amongst the parties to the *lis*.

2. Plaintiff filed the suit for declaration, partition and permanent injunction, by pleading that residential house bearing property No.73, ad measuring 300 sq. yards, situated in Ward No.19, Purewal Colony, Patti Taraf Insar in District Panipat, owned by one Ami Chand, who is father of plaintiff and defendants No.1 to 3, (in a family settlement in the year 1995). Defendant No.3 – Smt. Kaushalya, sister of plaintiff, relinquished her share, making the plaintiff and defendants No.1 & 2, joint owners to the extent of 1/3rd share each. Thus, plaintiff pleaded that he being the owner of the property of 1/3rd share, on the basis of family settlement, be allowed his separate part in the house by conducting the partition proceedings as per law.

3. On the other hand, suit was contested only by defendant No.1,

who pleaded in his written statement that though, family partition/settlement was done in the year 1995, but he had compensated the plaintiff and defendant No.2 in lieu of their share, and therefore, since then he is the absolute and sole owner of the property, by virtue of the family settlement.

4. On the basis of pleadings raised by the parties, learned Trial Court framed the following seven issues:-

- “i. Whether the plaintiff is entitled to the decree of declaration, as prayed for? OPP*
- ii. Whether the plaintiff is entitled to the decree of partition of suit property, as prayed for? OPP*
- iii. Whether the plaintiff is entitled to the decree of permanent injunction, as prayed for? OPP*
- iv. Whether the suit is not maintainable? OPD*
- v. Whether the plaintiff has no cause of action or locus-standi to file the present suit? OPD*
- vi. Whether the plaintiff has suppressed the true and material facts from the court? OPD*
- vii. What relief.”*

5. While analyzing the evidence led by both the sides, both the Courts below observed that in regard to the pleaded family settlement of the year 1995, there is no evidence brought on record by either of the parties. Rather, in cross-examination, it is admitted by the plaintiff that he remained out of country w.e.f. 1982 to 2003.

Taking into consideration the said part of admission, the Courts below have held that plaintiff failed to prove his own pleadings regarding

the family settlement in the year 1995, because as per his own admission, plaintiff was not even in the country at the time of alleged family settlement.

6. On the other hand, no evidence was led by defendant No.1 also for his plea that in the said family settlement, he had compensated the plaintiff, and defendant No.2, *qua* their share in the house.

7. Considering the circumstances that both the sides i.e. the contesting parties – plaintiff & defendant No.1, failed to prove their own pleadings, prayer for declaratory decree has been declined.

However, considering the natural succession in favour of the parties, the Courts below have held that plaintiff and defendants are entitled to 1/4th share each, in the family property. Accordingly, preliminary decree was passed. Findings given by learned First Appellate Court in paragraph Nos. 13, 14, 15, & 16, are reproduced here-under:-

“13. Only short argument was raised regarding exclusive possession over the suit property. The contention of appellant/defendant no.1 is that he is in exclusive possession over the suit property, in view of the fact that house in the suit property was constructed by the appellant/defendant no.1 with his personal earning and in the family settlement of the year 1995, the plaintiff and defendants no.2 and 3 have relinquished their rights in the suit property and as such he became sole owner of the same. Moreover, the plaintiff and defendants no.2 and 3 were given cash in lieu of the property after which they purchased other immovable properties.

14. So far as ownership is concerned, same now cannot be brought in question because there is no counter

RSA-3914-2019 (O&M)

- 4 -

claim filed by the appellant/defendant no.1. It is not in dispute that thereafter Ami chand was owner of the suit property who has purchased vide sale deed Mark-PA. Therefore, plaintiff and defendants no.1 to 3, being legal heirs of deceased Ami Chand, have equal rights in the suit property.

15. *Admittedly cross-examination of PW1 Balram shows that he has admitted that he is not residing in the house in dispute for the last 10 years. Defendant no.1 is residing in the said house along with his family. He is residing in Virat nagar, Model Town, Panipat and he has Voter Card and Ration Card on the aforesaid address. Defendant no.2 is also residing in Virat Nagar, Panipat, for the last 11-12 years. Hence, from the admission of plaintiff Balram, it is clear that it is the defendant who is in possession of the suit property.*

16. *The learned Trial Court has held the possession of defendant no. 1 rightly so. If the property joint and is in possession of one person, it is considered to be possession of all under the law and is subject to partition and this exactly as the learned trial court has held. Accordingly, finding of learned Trial Court on issues no.1 to 3 does not suffer from any illegality and impropriety and therefore, the same are affirmed.”*

8. I have gone through the findings recorded by the Courts below, and am of the view that there is no illegality or perversity in the judgments & decree passed by the Courts below, as parties have failed to prove their pleadings, and rightly each one of them have been held entitled to their 1/4th

RSA-3914-2019 (O&M)

- 5 -

share in the family property.

Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal being devoid of merits, stands **dismissed**. The judgments & decree passed by both the Courts below are affirmed.

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 12, 2023

J.Ram

Whether speaking/reasoned: *Yes/~~No~~*
Whether Reportable: *Yes/~~No~~*