

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1716 of 2022 (O&M).
Date of Decision: 20.12.2023.

Sat Narain

....Appellant.

Versus

Rajesh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ravinder Singh Saroha, Advocate for appellant.

Lalit Batra, J.

This regular second appeal has been filed by appellant/plaintiff impugning the legality of judgment and decree dated 16.05.2022 passed by learned Additional District Judge, Sonipat, dismissing the appeal preferred by him against judgment and decree dated 17.02.2017 rendered by learned Additional Civil Judge (Senior Division), Sonipat, vide which suit instituted by appellant/plaintiff seeking relief of possession with consequential relief of permanent injunction, was dismissed.

2. Precisely, the case of appellant/plaintiff is that he is owner of the suit property i.e. plot measuring 420 square yards marked with letters BCEF as shown in the site-plan, situate in *Abadi Deh* of village Jat Joshi, Tehsil and District Sonipat. Earlier, a plot marked with letters ABCD as shown in the site-plan was owned by Ram Sarup, grandfather of plaintiff and defendants

No.1 to 3, who during his life time about 60 years back, had partitioned the said plot between his two sons namely Jage Ram (father of defendants No.1 to 3) and Tara Chand (father of plaintiff). Thus, Tara Chand became owner-in-possession of southern portion of said plot i.e. the suit property marked with letters BCEF as shown in the site-plan, whereas northern portion of said plot marked with letters ADEF as shown in the site-plan, came to the share of Jage Ram. About three years back, an oral family settlement was arrived at, vide which proforma defendant No.4-Tara Chand (since deceased) now represented through his LRs, had relinquished the suit property in favour of plaintiff. Defendants No.1 to 3 filed a Civil Suit No.607 of 2006 regarding some portion towards western side of their property marked with letters ADEF as shown in the site-plan, against Shri Pal @ Malha and others, but the said suit was dismissed, vide judgment and decree dated 12.01.2011. About a year back, plaintiff had shifted to Sonipat and occasionally used to visit his village Jat Joshi. After decision of above said civil suit, while taking undue advantage of absence of plaintiff from village, about a week back, defendants No.1 to 3 started raising illegal construction over the suit property marked with letters BCEF, however, they have no right, title or interest in the said property. Plaintiff has obtained photographs of fresh construction work carried out by defendants No.1 to 3 over the suit property and requested them to vacate the suit property illegally occupied, but to no avail, therefore, plaintiff was constrained to file the instant suit against defendants.

3. On notice of the suit, respondents/defendants No.1 to 3 filed written statement wherein preliminary objections *inter alia* of maintainability

of suit; cause of action; suit being bad for non-joinder of necessary parties and plaintiff has not come to the Court with clean hands, have been taken. On merits, it is contended that site-plan filed by plaintiff does not depict true state of affairs. As a matter of fact, suit property marked with letters BCEF pertains to share of Jage Ram and he used to reside there and after his death, his sons defendants No.1 to 3 are residing therein. Portion marked with letters AFED belongs to defendants No.5 and 6 namely Deepak and Pardeep sons of Subhash, brother of plaintiff. Tara Chand, grandfather of Deepak and Pardeep, had given above said portion to Subhash, whereas another plot situate within the *Abadi Deh* of village was given to plaintiff. Hence, plaintiff has no concern whatsoever with the suit property. Above said Deepak and Pardeep had raised construction of their house over the above said portion about ten years back. Plaintiff by misleading his father had sold some agricultural land for Rs.10,10,00,000/- and grabbed the entire amount including share of his brother Subhash, his sisters namely Santosh, Sumitra and Saroj Bala. Sisters of plaintiff had filed civil suit against him and their father Tara Chand not to alienate the ancestral property without any legal necessity and the said suit is still pending adjudication. Denying other averments of the plaint, dismissal of the suit has been prayed for.

4. On coming to know about the present suit, above said Deepak and Pardeep filed an application under Order I Rule 10 CPC seeking their impleadment as party defendants, which was allowed and they were impleaded as defendants No.5 and 6 in the present suit. Defendants No.5 and 6 filed separate written statement raising certain preliminary objections

including that they are entitled to special costs under Section 35A CPC. On merits, they have reiterated the stand as that of defendants No.1 to 3 and prayed for dismissal of suit.

5. Plaintiff had filed replication wherein he controverted the claim of defendants and reiterated his claim as mentioned in the plaint. On the pleadings of the parties, following issues were settled:-

- (1) Whether the plaintiff is entitled for the relief of possession directing defendants No.1 to 3 to remove their illegal construction from the suit property, as prayed for? OPP.
- (2) If Issue No.1 is proved then “whether the plaintiff is entitled for the consequential relief of permanent injunction restraining the defendants from raising construction over the suit property”, as prayed for? OPP.
- (3) Whether the suit of the plaintiff is not maintainable in the present form? OPD.
- (4) Whether plaintiff has no *locus standi* or cause of action to file the present suit? OPD.
- (5) Whether the plaintiff has concealed the true facts from the Court? OPD.
- (6) Relief.

6. Both the parties led oral as well as documentary evidence to substantiate their respective stands.

7. Considering the evidence available on the record and submissions made on behalf of the parties, learned Trial Court reached at the conclusion that appellant/plaintiff has failed to prove that suit property came to his share in a family settlement and, thus, he is not entitled to the relief as prayed for and accordingly suit was dismissed, vide judgment and decree dated

17.02.2017.

8. Feeling aggrieved by the judgment and decree dated 17.02.2017 passed by learned Trial Court, appellant/plaintiff preferred appeal, which was dismissed by learned first Appellate Court, vide judgment and decree dated 16.05.2022.

9. Being unsatisfied with the judgment and decree dated 17.02.2017 passed by learned Trial Court and judgment and decree dated 16.05.2022 rendered by learned first Appellate Court, appellant/plaintiff has preferred the instant second appeal.

10. The submissions made by learned counsel for appellant/plaintiff have been considered and record perused.

11. Learned counsel for appellant/plaintiff argued with vehemence that the impugned judgments and decrees are based on conjectures and surmises. Learned Trial Court did not frame the issues correctly and further erred in clubbing and deciding issues No.1 and 2 together, whereas all the issues should have been decided separately. Learned Trial Court ignored the fact that plaintiff is owner of the suit property by virtue of oral family settlement whereby his father had relinquished the said property in his favour and further actual physical possession thereof was also delivered to him. Plaintiff being owner is entitled to take possession of suit property, which has been illegally encroached upon by defendants No.1 to 3. Thus, learned Trial Court has grossly erred in dismissing the suit and the appeal preferred against the judgment and decree passed by learned Trial Court was also wrongly dismissed by learned first Appellate Court.

12. The arguments of learned counsel for appellant/plaintiff may appear to be attractive but are not convincing and meritorious.

13. A bare perusal of pleadings and further having perused the record, it can be observed that Ram Sarup, predecessor-in-interest of parties, being exclusive owner had divided his land between his two sons namely Jage Ram and Tara Chand, with specific portions and in case any of them was aggrieved while enjoying division of property, then aggrieved party could have agitated such division. Ram Sarup had divided his land about sixty years back and it clearly implies that his both sons took possession of their specific portions at that time. In case Tara Chand (father of appellant/plaintiff) was aggrieved of said division, he could have agitated his claim but he did not raise any issue. Appellant/plaintiff has claimed that he became owner of suit property as his father Tara Chand had relinquished said property in his favour by oral family settlement. Admittedly, Tara Chand was blessed with two sons namely Sat Narain (appellant/plaintiff) and Subhash, father of respondents/defendants No.5 and 6. Apart from that, Tara Chand was blessed with three daughters namely Santosh, Sumitra and Saroj Bala. It is categorical stand of appellant/plaintiff that by virtue of oral family settlement, his father (Tara Chand) had relinquished the suit property in his favour. In case any such oral family settlement was arrived at, it should have been amongst all the successors-in-interest of Tara Chand and it was required for them to get prepared memorandum in writing to be acted upon, but no such memorandum has been produced or proved by appellant/plaintiff to establish that oral family settlement was acted upon in letter and spirit. However, it could not be

understood as to in what manner a family settlement was arrived at between Tara Chand and his son Sat Narain (appellant/plaintiff) and that too in the absence of another son namely Subhash or his successors-in-interest (respondents/defendants No.5 and 6).

14. Moreover, appellant/plaintiff (Sat Narain) when stepped into the witness-box as PW-1 has deposed that Jage Ram, father of respondents/defendants No.1 to 3, has a share in the suit property. He also deposed that his brother Subhash has equal share in the property of his father. Appellant/plaintiff has categorically deposed that he has a separate residential plot in the *abadi* of the village. In this view of the matter, it can be conveniently held that appellant/plaintiff has a separate residential plot in the *abadi* of the village and his brother Subhash (since deceased) had equal share in the estate of his father-Tara Chand. Respondents/defendants No.5 and 6 are sons of said Subhash. In case respondent/defendant No.4-Tara Chand (since deceased) now represented through LRs, had relinquished his right in the suit property in favour of appellant/plaintiff alone, then it was required for latter to seek relief of declaration claiming his ownership on the basis of relinquishment deed, if any, executed by his father, but no such relief of declaration has been sought. In case any joint property has not been legally partitioned, a co-sharer may agitate his claim by filing suit for partition. However, in the instant case, appellant/plaintiff without seeking above said course has straightaway sought relief of possession of suit property on the ground that respondents/defendants No.1 to 3 have encroached upon the said property.

15. In view of above, both the Courts below have rightly given firm

findings that appellant/plaintiff has failed to prove any oral family settlement and even otherwise said plea raised by him appears to be evasive and self-contradictory.

16. Learned counsel for appellant/plaintiff has failed to point out any illegality in the findings recorded by learned Trial Court as well as learned first Appellate Court.

17. Thus, there being no reason to interfere in the findings recorded by learned Trial Court as well as learned first Appellate Court and there being no merits in the appeal, the same is dismissed.

18. Since the main appeal itself has been dismissed, pending application(s), if any, also stand dismissed.

(LALIT BATRA)
JUDGE

20.12.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No