

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**RSA No.869 of 2021 (O&M)
Date of Decision : 22.02.2023**

Sarabjit Singh

....Appellant

VERSUS

Lalita Kumari and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Dhivya Navjot Kaur, Advocate for the applicant-appellant.

ALKA SARIN, J. (Oral)

CM-1668-C-2023

This is an application under Section 151 of the Code of Civil Procedure, 1908 for preponing the date of hearing in the main case (RSA-869-2021) from 31.08.2023 to an early date.

Notice of the application.

Mr. Dinesh Nagar, Advocate accepts notice of the application on behalf of the respondents and states that he has no objection if the present application is allowed and the date of hearing in the main appeal is preponed.

For the reasons stated in the application, the same is allowed. With the consent of learned counsel for the parties, the main appeal is taken on Board today itself.

CM stands disposed off.

RSA-869-2021

The present appeal has been preferred by the defendant-appellant against the concurrent findings recorded by both the Courts below.

The facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for separate possession by way of partition by metes

and bounds of half share in the suit property fully described in the plaint along with a prayer for permanent injunction for restraining the defendant-appellant from changing the nature of the suit property by damaging the construction on the suit property till its partition. It is averred in the plaint that the suit property is situated in a residential colony and was in the joint ownership of the plaintiff-respondents and the defendant-appellant. It was further averred in the plaint that the suit property was purchased by Bimla Devi wife of late Dyal Singh, mother-in-law of plaintiff-respondent no.1, and after her death it was mutated in the name of the defendant-appellant and Sandeep Singh, husband of the plaintiff-respondent no.1. The husband of the plaintiff-respondent no.1 died on 27.11.2014 and thereafter mutation of half share was sanctioned in the names of the plaintiff-respondents in equal shares. The suit property was shown as joint in the revenue record and the plaintiff-respondents were unable to use their share effectively and hence the suit for partition.

The defendant-appellant filed a written statement raising preliminary objections qua the maintainability. It was averred in the written statement that the suit property was not joint ownership of the plaintiff-respondents and the defendant-appellant. It was further averred that the defendant-appellant was working as an accountant from Class XI onwards and that father of the defendant-appellant had died on 06.07.1996 and the entire responsibility of the family fell on the defendant-appellant and that husband of plaintiff-respondent no.1 was school going. It is further the case that the suit property was purchased in the name of the mother by the defendant-appellant. Thereafter, the defendant-appellant started construction

over the suit land and completed the structure. It was also averred in the written statement that Sandeep Singh joined a job on contractual basis in Pojowal in the year 2004 and later resigned from service for doing Ph.D. and that the defendant-appellant had been providing funds for his studies. It was further averred that the defendant-appellant spent Rs.12 lakhs on the construction of the house and also served his deceased brother and paid Rs.50,000/- to clear his car loan.

Replication was filed reiterating the stand taken in the plaint and controverting the stand taken in the written statement.

On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are entitled for the relief of separate possession by metes and bounds ? OPP
2. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Relief.

On the basis of pleadings of the parties and the evidence on the record, the suit of the plaintiff-respondents was decreed vide judgment and decree dated 25.01.2019. Aggrieved by the said judgment and decree dated 25.01.2019, an appeal was preferred by the defendant-appellant. In appeal, the sole argument of the defendant-appellant was that the deceased, Sandeep Singh, had not contributed any amount to the construction of the house and that the entire expenditure was borne by the defendant-appellant. The First

Appellate Court in para 10 culled out the question, which was required to be answered, which reads as under :

“10. After hearing arguments of learned counsel for both the parties, following points emerges for determination.

“Whether the learned trial court has committed grave error while determining the share of the parties in the suit land in order to give relief of separate possession by way of partition by metes and bounds in favour of parties to the suit.”

The appeal was dismissed by the First Appellate Court vide judgment and decree dated 20.07.2021. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant has vehemently contended that both the Courts below have not considered the argument that the entire construction over the suit property was raised by the defendant-appellant as also the fact that the suit property was purchased by the defendant-appellant in the name of his mother. Further argument of learned counsel for the defendant-appellant is that both the Courts below have not appreciated the fact that Sandeep Singh was a student at the time of death of his father and it was the defendant-appellant who had looked after the family and incurred all the expenses. It is further the argument that a car loan taken by Sandeep Singh was also paid by the defendant-appellant and hence, an inference ought to be drawn that the entire amount towards construction over the suit property was spent by the defendant-appellant. It is further the

argument of learned counsel for the defendant-appellant that no issue has been framed as to where the money had come from. Learned counsel would contend that since the plaintiff-respondent no.1 has admitted in her cross-examination that she never stayed at Nakodar and that she was not aware whether any such amount was spent, hence, an inference ought to be drawn that the amount was spent by the defendant-appellant.

Per contra learned counsel for the plaintiff-respondents has contended that both the Courts below have considered the arguments raised by learned counsel for the defendant-appellant and were specifically rejected. It is further the argument that there is not an iota of evidence to the effect that the entire amount on construction was spent by the defendant-appellant.

I have heard learned counsel for the parties.

In the present case the defendant-appellant though took a stand in the written statement that the entire amount was spent by him on the construction as also that the suit property itself was purchased by the defendant-appellant, however, the defendant-appellant miserably failed to lead any cogent evidence to show that any amount was spent by him either at the time of purchasing of the suit property or on the construction. The argument of learned counsel for the defendant-appellant that no issue has been framed *qua* the fact that as to whether the defendant-appellant had spent the amount on the construction of the suit property is noticed only to be rejected. It is trite that once the parties are alive to the issues involved, even if no issue has been framed, the same would not be fatal to the case.

Ramakrishna Tapovanam & Ors. [2005 (3) RCR (Civil) 404] has held as under :

“39. If the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case without establishing prejudice, it would not be open to a party to raise the question of non-framing of particular issue.

40. In Nedunuri Kameswaramma v. Sampati Subba Rao [AIR 1963 Supreme Court 884], it was observed :

"No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer..."

It is further to be noticed that this was the precise argument raised before the First Appellate Court and was specifically dealt with by the First Appellate Court. Once the stand taken by the defendant-appellant in the written statement was that the entire amount was spent by him on the construction on the suit property it was incumbent upon the defendant-appellant to have led evidence to prove that the said amount was spent by him. No effort was made to lead any cogent evidence and even before the First Appellate Court no effort was made to even lead additional evidence, in case there was any with the defendant-appellant. In the absence of any evidence, the argument raised by the learned counsel for the defendant-appellant deserves to be rejected.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. Pure findings of fact have been returned by both the Courts below which call for no interference by this Court. No question of law, much less any substantial question of law, arises in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed.

22.02.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO