

Neutral citation No. **2023:PHHC:067885**

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA 3264 of 2013 (O&M)
Date of decision : May 9th, 2023

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Mustaq Ali

.....Appellant

vs.

Gulzar Khan and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Pritam Saini, Advocate for
Mr. Deepak Saini, Advocate and
Mr. Abhishek, Advocate for the appellant.

Mr. Naresh Kaushal, Advocate for the respondents.

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H. S. Madaan, J. (Oral)

1. Briefly sated, facts of the case are that plaintiff – Mushtaq Ali son of Late Usuf Ali resident of Village Kambala, Tehsil and District SAS Nagar, Mohali, now resident of village Barouli, Tehsil Kharar, District SAS Nagar Mohali, had brought a suit against his brother Gulzar Khan and mother Rehmati, both residents of village Kambala, Tehsil and District SAS Nagar, Mohali, seeking separate possession by way of partition of a plot with construction measuring 1 Marla, fully detailed in headnote of the plaint and reflected in site plan attached therewith besides craving

for relief of permanent injunction restraining the defendants from alienating the suit property or from creating any incumbrances thereon, till partition proceedings are completed.

2. The version set up by the plaintiff was that the suit property was earlier owned by Usuf Ali predecessor-in-interest of the parties. Usuf Ali had died about 7-8 years earlier to filing of the suit. After his death, the suit property devolved upon the plaintiff and defendants. There were two other properties which were sold off by the plaintiff. Since the suit property was joint, the plaintiff wanted to get his share separated, but the defendants did not agree, as such he filed a suit in the Court.

3. On notice, the defendants appeared and filed a written statement, contesting the suit, raising various legal objections, on merits contesting that out of the three properties, two i.e. L.M.N.O. and U.V.W.X.Y.Z were residential houses of the parties in the abadi of the property marked as A.B.C.D.E.F.G.H was a vacant site. During the life time of Usuf Ali it was partitioned orally. Properties L.M.N.O and U.V.W.X.Y.Z were given to the plaintiff with the entire construction thereon, whereas the other property A.B.C.D.E.F.G.H was given to the defendants, where they raised construction with their own funds more than 20 years back. Now , they are residing there as owners and plaintiff has not concern therewith. The plaintiff has since sold off both the properties which had fallen to his share. He has left village Kambala even. The plaintiff has no share in the suit property. They prayed for dismissal of the suit.

4. The plaintiff filed replication controverting the allegations in the written statement, reiterating the prayer made in the plaint.

5. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to separate possession by way of partition of the plot in dispute? OPP
2. Whether the plaintiff is entitled to the permanent injunction, as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has not come to the court with clean hands? OPD
6. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Relief.

6. Parties were afforded adequate opportunity to lead evidence in support of their respective claims.

7. After hearing the arguments, the trial Court of Additional Civil Judge (Senior Division), SAS Nagar, Mohali, by giving issue wise findings, vide judgment dated 2.9.2011, dismissed the suit of the plaintiff.

8. Feeling aggrieved, the plaintiff had filed an appeal

before the District Judge, SAS Nagar, Mohali, which was assigned to Additional District Judge, SAS Nagar, Mohali, who vide judgment and decree dated 23.5.2013, dismissed the appeal and upheld the judgment and decree passed by the trial Court.

9. Still feeling aggrieved, the plaintiff has knocked at the door of this Court, by way of filing the present appeal, notice of which was given to the respondents- defendants, who have put in appearance through counsel.

10. I have heard learned counsel for the parties, besides going through the record.

11. Here the trial Court, considering the pleadings of the parties and analysing the evidence brought on record by them in a minute manner, has come to the conclusion that Usuf Ali – predecessor-in-interest of the parties was having three properties and during his life time, the joint properties had been partitioned. The plaintiff was given two properties L.M.N.O and U.V.W.X.Y.Z, whereas the suit property had come to the share of defendants, where they have constructed a house and residing there since long. The plaintiff has disposed of two properties, which had come to his share. This was admitted by him in his cross examination, when plaintiff got his statement recorded as PW-1. It being so, the plaintiff was not left with any right in the suit property and he could not claim a share therein by way of partition. The Ist Appellate Court of learned Additional District Judge, SAS Nagar, Mohali, has agreed with the trial Court in that regard. The judgments passed by the Courts below

are based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity therein.

12. Thus no ground is there to upset such judgments, while hearing the present appeal. No substantial question of law has arisen in the present appeal.

13. The appeal is without any merit and stands dismissed accordingly.

May 9th, 2023 chugh		(H.S. Madaan) Judge
	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No