

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-6237-2016 (O&M)
Date of Decision:26.04.2023

Vijay Kumar and another

...Appellants

Versus

Pardeep Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGAPresent: Mr. K.R. Dhawan, Advocate
for the appellants.Mr. S.P. Arora, Advocate and
Mr. Himanshu Arora, Advocate
for respondent No. 1.

ARUN MONGA, J. (Oral)

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

2. Having suffered concurrent findings by the two Courts below, plaintiffs No.2 and 3 are in second appeal before this Court. Assailed herein is judgment and decree passed by learned trial Court dated 23.04.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 01.07.2016, dismissing the suit for separate possession by way of partition by metes and bounds of 3/4th share of plaintiffs and 1/4th share of defendant and declining the decree of permanent injunction.

3. Briefly stated, facts as noticed by the courts below are as under:

“the plaintiffs and defendant are Hindus by birth, religion and caste and are governed by Hindu law Mitakshra branch of law, in the matter of inheritance, succession and marriages and they constitute of Joint Hindu Family. The suit property is a Joint Hindu Family Property, which is in joint possession and joint ownership of

the parties in four equal shares. The plaintiffs have 3/4th share while the defendant has 1/4th share in the joint property, which was inherited by the parties from their common ancestors. The property described at Sub para (1) was purchased vide sale deed dated 27.09.1957 and the remaining property was ancestral. The entire property fell into the common hotch potch of Joint Hindu Family Property. The suit property has not been partitioned in between the parties as far by metes and bounds and they are using the same as a joint property being Joint Hindu Family Property. Now the defendant is denying the title and joint holding of the suit property and is threatening to change the nature of the suit property from residential to commercial and is also threatening to alienate, transfer, mortgage, create charge on it, and cause damage by its demolition or to lease out the suit property illegally and forcibly, for which the defendant has got no right to do so, till the suit property is partitioned. Plaintiffs number of time requested the defendant to admit their claim over the suit property and not do such type of illegal acts, but all in vain. Hence, this suit.”

4. Defendant raised preliminary objections of maintainability, locus standi and barred by limitation etc. in his written statement and contested the suit.

4.1. On merits, it was submitted that the averments of the plaint were wrong. It was specifically denied that the suit property was Joint Hindu Family Property and was in joint possession and joint ownership of the parties in four equal shares. It was also denied that the entire property fell into Joint Hindu Family Property. It was submitted that originally Hans Raj, father of the parties, was exclusive owner and in exclusive possession of the suit house. He had four sons and the house in dispute was given to defendant by Hans Raj. After the death of Hans Raj, the suit property had been entered in the Municipal Record. The electricity meter was installed in the name of Hans Raj. Plaintiffs neither came in possession of any part of the suit house till date nor they had any right, title or concern with the suit house.

4.2. Further the defense was that the present suit was allegedly in counter blast to the prior suit already filed by defendant against the plaintiffs. Defendant, being the exclusive owner and in possession of the suit property, had each and every right to deal with the same. Defendant also took the additional pleas that suit of plaintiffs was neither maintainable nor competent in its present form and that plaintiffs had

concealed the true and material facts from the Court and they were not entitled to any relief from the Court.

5. Replication was filed reiterating the averments of plaint. Based on rival pleadings, following issues were framed:

- “1. Whether the suit property is Joint Hindu Family Property land is in joint possession and joint ownership in equal share? OPP
2. Whether the plaintiffs are entitled to separate possession of their 3/4th share by way of partition out of the suit property of defendant? OPP
3. Whether suit is maintainable? OPP
5. Whether Prem Kumar brother of the defendant executed a valid registered Will dated 13.10.2006 in favour of defendant of the suit property? OPD
- 5-A. If the execution of the Will dated 13.10.2006 is proved, whether said Prem Kumar was competent to execute the Will dated 13.10.2006? OPD
6. Relief. “

6. 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*.

7. On appraisal of evidence vis-à-vis pleadings, issue Nos. 1,2 and 3 were decided against plaintiff and issues No. 5 and 5-A were decided against defendant. Consequently, suit of plaintiff was dismissed by learned trial Court vide impugned judgment and decree dated 23.04.2015.

8. Feeling aggrieved, plaintiffs No.2 and 3 went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiffs No.2 and 3 before this Court.

9. I have heard learned counsel for parties and have perused the case file.

10. In its judgment, learned First Appellate Court, *inter alia*, observed as below:-

“ 13. After considering the submissions made by the ld. counsel for the parties, it reveals that the appellants-plaintiffs in the present case have claimed the relief of separate possession by way of partition of the suit property. During his arguments, ld. counsel for the appellant-plaintiffs has contended that the property mentioned in sub para (I) of the head note of the plaint was purchased by Hans

Raj, father of the parties, during his life time, through sale deed dated 27.9.57. He has also argued that the remaining property was Ancestral and the entire property fell into the common pool of Joint Hindu Family Property. In support of their submissions, the appellants-plaintiffs have proved on record copy of the sale deed dated 27.9.57 in order to prove the ownership of their father namely Hans Raj over the above said property, which was purchased by him during his life time. The respondent-defendant during his pleading, evidence and arguments has admitted that their father Hans Raj during his life time purchased land measuring 30 ¼ sq yards share (sic). So it is admitted by both the parties that property as described in sub para (I) in the head note of the plaint was owned and possession by their father Hans Raj. Further, the relief regarding partition of the suit property claimed by the appellant-plaintiff regarding the remaining property as mentioned in sub para (ii) and (iii), it is incumbent upon the appellants-plaintiffs to prove that they had the right and title over the same. The perusal of the evidence i.e., oral as well as documentary as placed by the appellant-plaintiffs on the file, the appellant-plaintiffs have failed to prove on record the property as mentioned in sub paras (ii) and (iii) that both of them i.e. appellants-plaintiffs and respondent-defendants have any right, title or concern over it. During his arguments, ld. counsel for the appellant-plaintiffs has argued that the property as mentioned in the above said paras is the Ancestral Property of the parties, which was inherited by them from their common ancestors. But, in support of their above said submissions the appellant-plaintiffs have not place on record any documents to show that the property as mentioned in the above said paras was inherited by them and they have also failed to prove on record that from which source the above said property was purchased or from whom they inherited the same from their common ancestors. If, the appellants-plaintiffs want to get the suit property partition, then had they proved firstly that the property was standing in the name of their father Hans Raj. Now in the present case the property is recorded in the Municipal Record in the name of the respondent-defendant Pardeep Kumar being exclusive owner and in possession of the same. The perusal of the file further shows that the appellant-plaintiffs have not led any evidence or to prove any document on the file to who that the suit property is Joint Hindu Family Property of the parties and is in joint possession and joint ownership of the parties. As such, the appellants-plaintiffs have failed to prove on record that the suit property is the Joint Property of the parties and as the appellants-plaintiffs do not want to share the same with the respondent-defendant and the suit property be partitioned by metes and bounds. So, in the totality of facts and circumstances of the case this court is of the opinion that the trial court has rightly dismissed the suit of the appellant-plaintiffs and there is no scope for interference in the findings recorded by the trial court on various issues mentioned above. I have also guided myself with the ratio of judgments cited by the Ld. counsel for the appellant-plaintiffs and the proposition of law in these citations are not disputed, but, the same are not applicable to the case in hand and as such distinguishable.

14. No other point has been raised before the court.

15. As a result of above discussion, this court is of the view that there is no merit in the instant appeal and the same is hereby dismissed with costs.”

11. The contentions herein are that the defendant had admitted in his written statement and also in cross-examination that the house in question had been purchased by Hans Raj father of the parties vide sale deed dated 27.09.1957 and was his property that the same had been given to him in a family settlement. The defendant did not succeed in the earlier round of litigation. It is nobody's case that Hans Raj had executed any will. In the natural course of succession, therefore, on the death of Hans Raj the plaintiffs became its co-sharers with the defendant. Thus, the learned courts below wrongly held that the plaintiffs had no share in the said property. Further, it is contended that the remaining suit property (No. 2 and 3 in the headnote of the plaint/judgment of the learned trial court) had been proved to be the joint Hindu family property of the parties.

12. So far as property no. (1) in the headnote of the plaint (namely a residential room, bath room and a chobara thereon measuring 30-1/4 sq. yds) is concerned, I am inclined to accept the contention of the learned counsel for the plaintiff-appellants.

13. The parties are real siblings, being the children of Hans Raj (deceased). Plaintiff's case, inter alia, is that property no. (1) i.e. a residential room, bath room and a chobara thereon measuring 30-1/4 sq. yds, Loharan Street, Nabha, had been purchased by their father Hans Raj vide sale deed dated 27.09.1957. The defendant claims that Hans Raj had given the said property to him. Learned trial Court, noted in its judgment the plaintiffs' contention that no family settlement as alleged by the defendant ever took place; the defendant's story of alleged family settlement had already been discarded by the learned Civil Judge (Junior Division), Nabha vide judgment dated 01.05.2014 Ex PA and the matter so decided was pending before the learned Appellate Court. Having noted these submissions, the learned trial Court observed that it could not give any finding on the same when finding of Civil Court was already there and the same matter

was pending before the learned Appellate Court for decision. Yet, it decided issues No. 1 and 2 against the plaintiffs in respect of the entire suit properties including property (1) in the headnote of the plaint (namely a residential room, bath room and a chobara thereon measuring 30-1/4 sq. yds). I am of the opinion that in the given facts and circumstances, the said property at serial no. 1 in the headnote of the plaint should have been excepted from the findings recorded against the plaintiffs on issues No. 1 and 2. This error was not noticed or corrected by the learned First appellate Court while affirming the findings of the learned trial court on issues No. 1 and 2.

14. Qua the remaining suit property (at serial 2 and 3 of headnote of learned trial court's judgment), the learned First appellate Court noted that the plaintiffs had not led any evidence or proved any document on record as to from which source the same had been purchased or inherited and thus failed to prove that the same was joint property of the parties as also held by the learned trial Court. The plaintiffs had to stand on their own legs and prove their case. I find no reason to interfere with the concurrent findings of the learned two courts below to the effect that the plaintiffs had failed to prove that the remaining suit properties (at serial 2 and 3 of headnote of learned trial court's judgment) were joint property of the parties.

15. As a result of the above discussion, the impugned judgments passed by the learned courts are modified and it is directed that the claims/rights of the parties qua the property at serial No. 1 in the headnote of the plaint (namely a residential room, bath room and a chobara thereon measuring 30-1/4 sq. yds) shall abide by the final outcome of the appeal/matter pending before the learned Appellate Court against the judgment dated 01.05.2014 Ex. PA passed by the learned Civil Judge (Junior Division), Nabha. Qua the remaining suit properties (at serial 2 and 3 of headnote of learned trial court's judgment), the impugned judgments/decrees passed by the learned courts below are upheld.

16. With the aforesaid modification in the impugned judgments/decrees,

the instant appeal stands disposed of.
17. Pending application(s), if any, shall also stand disposed of.

26.04.2023
Harish Kumar

(ARUN MONGA)
JUDGE

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