

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1009-2017 (O&M)

Reserved on: 19.04.2023

Date of pronouncement: 29.04.2023

Rohtash

...Appellant

Versus

Ram Niwas

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Gurcharan Singh Bains, Advocate for
Mr. Vijay Sharma, Advocate for the appellant.

Mr. Sandeep Kumar Yadav, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Ram Niwas had brought a suit against defendant Rohtash seeking a decree for permanent injunction restraining the defendant from interfering in his ownership and possession over H.No.B-II-2-S/245 as per site plan dated 24.05.2008 marked with letters ABCD situated in Mohindergarh town, Tehsil & District Mohindergarh. As per version of the plaintiff, the father of plaintiff and defendant were real brothers and House No.B-II-2-S/245 was in their joint name whereas other House bearing No.B-II-2-S/245/1 was in the name of father of plaintiff namely Dhansi Ram; in a family settlement, House No.B-II-2-S/245 was given to

Dhansi Ram father of plaintiff, whereas House No.B-II-2-S/245/1 was given to father of the defendant and both the parties started residing there; later on, the plaintiff and his brother Ram Kumar came in possession of the house to the extent of $\frac{1}{2}$ share; Ram Kumar has since expired and his sons Som Dutt, Puran and Krishan are in possession of their share; defendant has no concern with House No.B-II-2-S/245 but he by taking advantage of wrong entry which is continuing in the name of ancestors of the parties regarding House No.B-II-2-S/245 in municipal record, started interfering in the ownership and possession of the plaintiff giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On being put to notice, the defendant appeared and filed a written statement, contesting the suit, contending that besides Dhansi Ram and Ghaman Ram, there was another son of Patram namely Singh Ram, who had expired many years earlier; he was having a share in plot No.245/A upon which Richpal son of Sardara had raised construction in the shape of a house; Patram had a brother by name of Ram Dayal who was survived by Bhuru Ram and Bhuru Ram was survived by Bhagwan Singh and Ram Chander who are in possession of House No.B-II-S/245/2; according to the answering defendant, Dhansi Ram and Ghaman Ram are owners of House No.B-II-S/245 as per municipal record; share of Ram Kumar brother of the plaintiff was purchased by the defendant from his sons Som Dutt, Puranmal and

widow Santra Devi, vide sale deed No.21116 dated 24.08.2007 and since then, the defendant is in possession of that property as owner; the defendant prayed for dismissal of the suit.

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

1. Whether fathers of the parties to the suit were co sharer to the extent of ½ share in the house No.B-II-2-S/245 and father of plaintiff Dhansi Ram was exclusive owner of house No.B-II-2-S/245/1? OPP.
2. Whether a family partition affected between Dhansi Ram and Ghaman about 50 years ago where under house no.245/1 was given to father of defendant and house no.245 was given to father of plaintiff, if so to what effect?OPP.
3. If issues no 1 and 2 proved in affirmative whether plaintiff is entitled for decree of permanent injunction or mandatory injunction as prayed for in alternative? OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Whether the plaintiff has not come before court with clean hands and suppressed the material facts from the court? OPD.
7. Whether the plaintiff has affixed less court fees on plaint? OPD.
8. Relief

4. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Mohindergarh, vide judgment and decree dated 19.08.2014 gave issue-wise findings and ultimately decreed the suit of plaintiff directing the defendant to remove construction, if any, on any part of the suit property bearing House No.B-II-2-S/245 at his own expenses and hand over vacant possession to the plaintiff within two months and further the defendant was restrained from interfering in the

suit property in any manner except in due course of law.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendant had preferred an appeal before District Judge, Narnaul, that appeal was assigned to Addl. District Judge, Narnaul, who vide judgment and decree dated 13.09.2016 had dismissed it.

7. Still feeling aggrieved, the defendant has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent, who has put in appearance through counsel.

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

9. In this case, both the Courts are unanimous in finding merit in the case of plaintiff and rejecting the version set up by the defendant. The trial Court while giving issue-wise findings had decided issue No.1 in favour of the plaintiff and against the defendant holding that fathers of the parties to the suit, were co-sharer to the extent of $\frac{1}{2}$ share in House No.B-II-2-S/245 and Dhansi Ram was exclusive owner of House No.B-II-2-S/245/1; issue No.2 was decided in favour of the plaintiff and against the defendant holding that a family partition had been effected between Dhansi Ram and Ghaman about 50 years ago vide which House No.B-II-2-S/245/1 was given to father of defendant and House No.B-II-2-S/245 was given to father of plaintiff; issue No.3 was decided in favour of the plaintiff and against

the defendant holding that defendant during pendency of the suit had raised construction as is clear from the report of Local Commissioner Ex.P7 and site plan Ex.P8 over portion depicted with letters FGEH corroborated by site plan Ex.PW4/B. Though the defendant had claimed that he had purchased that portion of property from LR's of Ram Kumar brother of plaintiff but he failed to prove his possession on the date of filing of the suit and in view of the family settlement effected between the predecessor in interest of the parties, the act of raising construction by the defendant over any part shown in site plan Ex.PW4/B owned by the plaintiff is totally illegal and defendant is liable to remove the same.

10. The Ist Appellate Court found itself in agreement with the trial Court in the process the appeal filed by the defendant was dismissed and the judgment and decree passed by the trial Court were affirmed.

11. Both the judgments are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity therein which might have called for interference by this Court in Regular Second Appeal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

29.04.2023

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(H.S. MADAAN)
JUDGE

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