

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-571-2020 (O&M)

Date of Decision: 20.11.2023

Durga Prasad and another

....Appellants

VERSUS

Kishori Lal (since deceased) through LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. J.P.Sharma, Advocate,
for the appellants.

KARAMJIT SINGH, J.

Present appeal has been filed by the appellants-plaintiffs against the judgment passed by both the Courts below whereby concurrent findings have been recorded against the appellants.

2. Brief facts of the case are that the appellants-plaintiffs filed suit for permanent injunction against respondent No.1-Kishori Lal (since deceased) through his LRs on the ground that the appellants-plaintiffs are owners in possession of the suit property comprised in Khewat No.1635, Khatauni No.2345 Khasra No.3135/1 Min South ad measuring 1 Bigha – 1 Biswa as per jamabandi for the year 1989-90 which had fallen to the share of the appellants-plaintiffs as per family settlement dated 17.6.2002 and that the respondents/LRs of Kishori Lal are having no right to dispossess the appellants-plaintiffs from the suit property and to raise construction therein.

3. The suit was contested by the aforesaid respondents who filed written statement wherein factum of family partition dated 17.6.2002 was denied and it was pleaded that the suit property came to both the parties

from Dulli Chand and that the contesting respondents/defendants are having 1/4th share and they are in occupation of the suit property to the extent of their share. It was pleaded that the suit be dismissed. The respondents/defendants also filed counter claim to restrain the appellants-plaintiffs from interfering into their peaceful possession over the suit property and further restraining them from obstructing the contesting respondents/defendants from raising construction in the suit property.

4. On the pleadings of the parties, the following issues were framed : -

1. Whether the plaintiff is entitled to the relief of injunction as prayed for? OPP
2. Whether present suit is not maintainable? OPD
3. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD
4. Whether the plaintiff is estopped from filing the suit by their act and conduct? OPD
5. Whether the plaintiff has concealed the true and material facts from the court if so, to what effect? OPD
6. Whether the present suit is time barred? OPD
7. Whether contesting defendant is entitled to the relief as claimed in the counter claim? OPD
8. Relief.

5. Counsel for the appellants-plaintiffs examined PW1- Rajender Kumar Saini Draftsman, PW-3 Hari Ram Saini, Notary Public, PW-4 Ghisa Ram and Durga Prasad plaintiff No.1 appeared in the witness box as PW2.

The appellants-plaintiffs also produced site plan Ex.PW1/A, affidavit of Net

Ram PW3/A and sale deed dated 6.2.2002 Ex.PX executed by Kishori Lal in favour of Ram Avtar for valuable consideration. The appellants-plaintiffs also produced documents Mark DA, Mark DB, Mark DC, Mark PA, Mark PB, Mark PC and Mark PD.

6. On the other hand, counsel for the contesting respondents examined DW1-Mool Chand defendant No.1-A, DW2-Nand Kishore Sharma Draftsman, DW3-Ram Kishan, DW4-Sanjay Yadav, Notary Public and further produced documents i.e. site plan Ex.DW2/A, affidavit of Kishori Lal Ex.DW4/A, jamabandi Ex.D1, Ex.D6 and Ex.D7, register intekal Ex.D2 8-10, Khasra Girdawari Ex.D3, sale deed dated 8.7.2010 Ex.D5 and Mark DB, sale deed dated 30.11.2011 Ex.D4 and site plan Ex.D11.

7. In rebuttal, counsel for the appellants-plaintiffs tendered sale deed dated 6.2.2002 Ex.PX.

8. After hearing counsel for the parties, learned trial Court decided issue No.1 against the appellants-plaintiffs while issue No.7 with regard to counter claim was decided against the contesting respondents/defendants and consequently, the suit filed by the appellants-plaintiffs as well as counter claim filed by the respondents/defendants were dismissed.

9. The appeal filed by the appellants/plaintiffs against the judgment of the learned trial Court dated 23.8.2016 was also dismissed by the Court of Additional District Judge, Narnaul vide judgment dated 12.9.2019.

10. Being aggrieved, the appellants-plaintiffs have filed the present appeal.

11. I have heard counsel for the appellants-plaintiffs.

12. Counsel for the appellants-plaintiffs, while assailing the concurrent findings recorded by the learned trial Court as well as the first appellate Court, *inter alia* contends that the appellants-plaintiffs came into possession of the suit property measuring 1 Bigha - 1 Biswa on the basis of oral family settlement dated 17.6.2002 and that the contesting respondents-defendants have got no right to interfere into their peaceful possession over the suit property. Counsel for the appellants-plaintiffs referred to statements of PW1, PW2, PW3, PW4 and various documents placed and proved on record by the appellants-plaintiffs, in order to prove the factum of aforesaid oral family settlement dated 17.6.2002.

13. Counsel for the appellants-plaintiffs further contends that the impugned judgments are not sustainable and deserves to be set aside.

14. I have considered the submissions made by the counsel for the appellants-plaintiffs.

15. Admittedly, no original document was produced by the appellants-plaintiffs in the learned trial Court in order to prove that the suit property fell to the share of the appellants-plaintiffs in the family settlement dated 17.6.2002. The document relied upon by the appellants-plaintiffs to prove the factum of said family settlement is not having signatures of all the family members including Kishori Lal as has been observed by the learned trial Court. No jamabandi or revenue record was produced by the appellants-plaintiffs to prove that the said alleged family settlement dated 17.6.2002 was ever reflected in the subsequent revenue record.

16. Learned first appellate Court observed that as per jamabandi for the year 1989-90, Net Ram, Kishori Lal, Jai Dayal and Har Lal were shown

as joint owner in possession of the suit property. There is no revenue record to show that the suit property was ever partitioned as has been alleged by the appellant-plaintiff.

17. In light of above, both the Courts below have rightly held that the appellants-plaintiffs have failed to prove that the suit property fell to the share of the appellants in the family partition dated 17.6.2002. Thus, it stands proved that the parties are co-owners and thus, having interest in the whole property as also in every parcel of it and possession of joint property by one co-owner is to be considered as possession of all even if all but one are actually out of possession as has been held by Division Bench of this Court in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram** AIR 1961 Punjab 528 and has been relied upon by the first appellate Court in right perspective. This being the position, both the Courts below rightly held that the appellants were not entitled to relief as claimed by them.

18. For the foregoing reasons, this Court does not see any reason to disagree with the findings recorded by the learned trial Court as well as the first appellate Court. No question of law muchless substantial question of law arises for consideration by this Court in this regular second appeal. Consequently, this appeal is hereby dismissed in limine being devoid of merits.

(**KARAMJIT SINGH**)
JUDGE

November 20, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No