

RSA-5705-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5705-2019 (O&M)

Date of Decision: September 19, 2023

Mahesh Soni

...Appellant

Versus

Ramanand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Saurabh Bajaj, Advocate,
for the appellant.

SANJAY VASHISTH, J.

1. Present regular second appeal has been filed by defendant No. 1 – Mahesh Soni, against the concurrent finding of decretal of suit, filed by respondent Nos. 1 and 2 (plaintiffs), by challenging the judgment and decree dated 05.04.2016, passed by learned Additional Civil Judge (Senior Division), Rewari (Trial Court), as affirmed by learned Additional District Judge, Rewari, vide impugned judgment and decree dated 29.07.2019 (First Appellate Court).
2. Factual matrix of the case is that plaintiffs (Rama Nand and Anil) filed a suit seeking a decree for permanent injunction for restraining the defendants from interfering in the peaceful use and possession of ancestral coparcenary property of the plaintiffs, boundaries of which is detailed in the plaint. It is also pleaded in the suit that if during the course of trial, defendants succeed in illegally ousting the plaintiffs, their possession be restored to its original position.
3. As per pleaded case of the plaintiffs, one Ram Dayal (father of

plaintiff No. 1 and grand-father of plaintiff No. 2) had been the owner in possession of residential house, situated in the *lal dora*. Said property was orally partitioned by Ram Dayal amongst his three sons, namely, (i) Chandgi Ram, (ii) Rama Nand, and (iii) Devi Chand, in equal share. Defendant No. 2 – Champa Devi is widow of Chandgi Ram, whereas defendant Nos. 3 and 4 – Chhabil Chand and Muni Lal respectively, are sons of Chandgi Ram, who were impleaded in the array of defendants by Trial Court, vide order dated 30.04.2015.

4. Plaintiff No. 1 (Rama Nand) and legal heirs of Devi Chand are owners in possession of the suit property in equal share, which has been shown in Red colour, marked with letters ‘ABCD’, and Chandgi Ram and his legal heirs are owners in possession of portion shown in Green colour, marked with letters ‘CDEF’, in the site plan attached with the plaint.

5. As per pleadings in the plaint, in fact, defendant No. 1 – Mahesh Soni (appellant herein) was the sole party initially in the suit and the suit for injunction was instituted because defendant No. 1, being stranger to the plaintiffs and a strong headed person, was bent upon to occupy the property of the plaintiffs.

6. In the written statement filed by defendant No. 1, apart taking formal objections, such as - cause of action; locus-standi; and maintainability etc., there was complete denial of the pleadings raised by the plaintiffs. However, it was not denied that Ram Dayal was the owner in possession of the property in dispute, who equally distributed the property amongst his three

sons. However, it is pleaded in the written statement that about 35 years back, plaintiffs have orally made a family settlement and given their share to Munni Lal etc., and in lieu of some money, possession of their share had been handed over by them to Chandgi Ram, Munni Lal and Chabil Dass etc. Since then, Champa Devi w/o Chandgi Ram etc. had been owner in possession of the property in dispute.

Defendant No. 1 further pleaded that he was put in possession of the disputed property in pursuance to an agreement to sell duly executed by said Champa Devi etc. (defendant Nos. 2, 3 and 4) in favour of his wife – Sunita Devi, after obtaining an amount of Rs.90,000/-. After denying all other pleadings, defendant No. 1 pleaded for dismissal of suit.

7. Defendant Nos. 2 to 4, who were impleaded as party to the suit by virtue of allowing an application under Order I Rule 10 CPC, filed their joint written statement by submitting that the property in dispute had been mutually partitioned in the year 1977, during the life time of Ram Dayal and Chandgi Ram. Plaintiff No. 1 alongwith his family members had left the village in the year 1974, whereas Devi Chand (father of plaintiff No. 2) left the village in the year 1980, and they started residing at Rewari, after purchasing some residential properties. Both the plaintiffs had relinquished their shares and all rights in the property in dispute in favour of Chandgi Ram (father of defendant Nos. 3 and 4), and in lieu thereof plaintiffs were given some ancestral funds and ornaments out of their joint family account, by the beneficiaries of the relinquished properties. It is also pleaded by defendant Nos. 2, 3 and 4 that

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after receiving an amount of Rs. 90,000/- as earnest money, agreement to sell dated 14.03.2012, was executed in favour of Sunita Devi wife of Mahesh Soni (defendant No. 1), by fixing total sale consideration as Rs.3,30,000/-.

8. After filing of the replication by the plaintiffs, vide order dated 03.09.2015, Trial Court framed the following seven issues:-

- “1. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP*
- 2. Whether the plaintiff is entitled to a decree of mandatory 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 is estopped by his own act and conduct to file the present suit? OPD*
- 6. Whether the plaintiff has not come to the Court with clean hands and has concealed the material facts from this Court? OPD*
- 7. Relief.”*

9. After leading of the evidence by plaintiffs and defendant Nos. 2 to 4, learned Trial Court decreed the suit by restraining the defendants from interfering into use and possession of the plaintiffs over the suit property, vide judgment and decree dated 05.04.2016.

The said judgment and decree was maintained by the learned First Appellate Court as well, vide its judgment and decree dated 29.07.2019.

10. I have heard learned counsel for the appellant and with his able

assistance gone through the evidence available on record.

11. It is not probable that defendant Nos. 2, 3 and 4 would have any interest in the suit, once, they had entered into an agreement to sell dated 14.03.2012, with defendant No. 1 – Mahesh Soni. Still, they have chosen to be impleaded as party to the suit, for the reasons best known to them, but undoubtedly, to support the stand of defendant No. 1, who in no manner has succeeded to prove his ownership in the disputed property.

It is also noticeable that defendant No. 1 or his wife Sunita Devi, in whose favour agreement to sell was executed by defendant Nos. 2, 3 and 4, has not appeared in the witness box, to depose and prove the pleadings raised by defendant No. 1. It is well settled law that for proving the pleadings directly, concerned party to the *lis* must appear, otherwise by keeping himself/herself away from the witness box, it would be assumed that he/she does not want to face cross-examination with a view to avoid/bring truth before the Court.

12. Even agreement to sell or payment of consideration, has also not been proved on record. It is also noticed by this Court that the suit originally is filed for decree of permanent injunction against defendant No. 1. There is nothing alleged or pleaded by the plaintiffs against defendant Nos. 2 to 4. In such circumstances, there is no reason to believe that defendant Nos. 2 to 4 are in possession of the property in dispute or even there is any apprehension to the plaintiffs of disturbance of their peaceful possession at the instance of defendant Nos. 2 to 4. Thus, merely their opposition to the prayer of the

plaintiffs for grant of decree of permanent injunction is of no consequence, once main contesting defendant No. 1, against whom suit is originally filed, has not chosen to appear in the witness box, to oppose the prayer made in the plaint.

13. After considering facts and circumstances in totality, and the evidence available on record, well reasoned findings have been recorded by learned Trial Court, in paragraph Nos. 12, 13, 14 and 15 of its judgment, which says as under:-

“12. However, in the considered opinion of this Court, the plaintiffs have been able to prove their case by leading the cogent evidence. It is an admitted fact that the property in dispute is situated within lal dora which was earlier owned by Ram Dayal, the ancestor of plaintiff and defendants no. 2 to 4. It is also an admitted fact that Ram Dayal had three sons namely Chandgi Ram, Ramanand, Devi and one daughter namely Kamla. It is also an admitted fact that the property in dispute was mutually partitioned during the life time of Ram Dayal. As per the case of the plaintiffs, they have started residing at Rewari due to their employment, but they did not gave up/relinquished their rights in the above-said ancestral property. It is also an admitted fact that they had their voting rights as well as ration card in village which stands clearly proved in the light of the document Ex. P2. The case set up by the defendants no. 2 to 4 is that Ramand and Devi Chand had relinquished their shares in the property in dispute in favour of Chandgi Ram etc. for some consideration i.e. some ancestral funds and ornaments of joint family account.

13. In the light of above-said averment, the onus clearly shifts upon the defendants no. 2 to 4 to prove the above-said family settlement, but in this regard, they have failed to lead any cogent evidence. They had not given any specific details in their pleadings regarding the above-said family settlement. It is also not their case that at the time of said family settlement Kamala d/o Ram Dayal was present. The pleadings of the defendants are also silent as to in whose presence the above-said family settlement taken place. They have not given the details of said family funds and ornaments which had been handed over to Ramanand and

Devi Chand sons of Ram Dayal in pursuance of alleged relinquishment of their shares in the property in dispute. Except the oral testimonies, there is nothing on record to prove the said family settlement. DW3 and DW4 are the hearsay witnesses only. In their examination-in-chief both of them have admitted that they are deposing on the basis of some hearsay facts. Hence their testimonies do not carry any value and do not support the case of the defendants in any manner. DW1 and DW2 have admitted in their cross-examination that the answering defendants i.e. Chabil Dass etc. had entered into an agreement to sell with Sunita qua the property in dispute for a total sale consideration of Rs. 3,30,000/- on 14.03.2012 out of which they have received Rs. 90,000/- and they had also handed over the possession of the same to Sunita. This fact leads to suggest this Court that now the answering defendants no. 2 to 4 are not in possession of the property in dispute. The defendants in this regard have also relied upon the documents Mark-DA and Mark-DB. Though it is a photocopy only and it has not been proved in accordance with the provisions of Indian Evidence Act, but still both of the documents being relied upon by the defendants can be read against the defendants. In view of their testimonies and in view of the recitals of the above-said documents it is clear that they have allegedly handed over the possession of the property in dispute to Sunita. Meaning thereby they are not in possession of the property in dispute. Hence they have no right to argue the matter or to interfere in the share of plaintiffs. Moreover there is nothing on record to prove that they are the owners in possession qua the whole of the property in dispute. Over-whelming evidence has come on record to prove that the plaintiffs jointly have ownership as well as possession of the same and at no point of time, they had ever parted their possession qua the property in dispute. The possession vests with the ownership. No best evidence has been produced by the answering defendants no. 2 to 4 to prove that they are the only owners in possession of the property in dispute.

14. *So far as the case of the defendant no. 1 is concerned, it has been set up by the answering defendant that his wife has purchased the property in dispute from Smt. Maya w/o Chandgi etc. for a total sale consideration of Rs. 3,30,000/- and his wife had handed over Rs. 90,000/- to them and his wife obtained the possession of the property in dispute. However it is pertinent to mention here that no document has been placed or proved on record by the answering defendant no. 1 to prove that she entered into an agreement with the defendants no. 1 and 2. No evidence at all is available on record to prove the legal possession of wife of*

answering defendant no. 1. It is also pertinent to mention here that the neither defendant no. 1 nor his wife has stepped in the witness-box to rebut the case of the plaintiffs. Hence an adverse inference is also drawn against the above-said answering defendant to the effect that despite appearance, he has failed to lead any evidence. Hence the evidence of the plaintiff remained unrebutted on the case file to this effect qua them.

15. *The plaintiff has not sought any relief against the defendants o. 2 to 4, but they themselves have been impleaded as a party by moving an application under Order 1 Rule 10 CPC. As per their own contention they had parted away with the property in dispute in favour of Sunita wife of defendant no. 1. Meaning thereby they have no concern with the property in dispute. Nothing has been produced on record by the answering defendant no. 1 to prove any right, title or interest in the property in dispute. The alleged agreement to sell has not been proved on record. The payment of consideration also stands not proved on record. In the instant case the title of the plaintiffs over the property in question is almost beyond any doubt particularly in the limited context of a suit for perpetual injunction. The defendants failed to plead their title. Possession is a phenomenon, which is fraught with its own uncertainties and several complications. The findings as to possession has to be recorded on the basis of several facts pleaded by both the parties. Title of plaintiff as regard the property plays an important role in the matter of drawing presumption as to possession. Law provides for drawing of presumption forward and backward particularly in the context of possession. If the plaintiff is in a position to pointed out his title and possession of the property up to a particular point of time the same state of affairs deserves to be presumed in a forward direction. If as between the versions put forward by the plaintiff on the one hand and the defendant on the other hand the probability is more towards the plaintiff being in possession, Court should not hesitate to grant the relief and reject it if it is otherwise. In the case in hand it is an admitted fact that Ram Dayal who had been the owner in possession of the property in dispute had three sons namely Chandgi Ram, Ramanand and Devi Chand. Nothing has been proved on record by the defendant that said Chandgi and Devi Chand had parted away their possession in the property in dispute or relinquished their share in favour of Chandgi or his legal heirs. Hence, the plaintiffs have been able to prove their title as well as possession.”*

14. In regard to the adverse inference against defendant No. 1, for not stepping into the witness box, learned First Appellate Court in paragraph Nos. 13 and 14 of its judgment has observed as under:-

“13. As per learned counsel for respondents, though, the appellants had examined DW4 Harpal as a witness to the agreement to sell between appellant no.1 and appellant no.2 but as the best witness to the said agreement to sell was appellant Mahesh himself, who has failed to step into witness box, learned lower court has rightly drawn adverse inference against the appellants. As per learned counsel in the impugned judgment learned lower court has discussed in detail the reasons for disbelieving the claim set up by appellants and in para no.13 of the impugned judgment learned lower court has rightly observed that respondents have proved their ownership as well as possession over the suit property and there is no evidence that they had ever parted with their possession qua the property in dispute. Hence, while relying upon the authority Ananthula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs& others, 2008(2), Apex Court Judgment, 660, learned counsel has prayed that after upholding the impugned judgment, both the appeals filed by the appellants be dismissed with costs.

14. In para no.3 of the plaint the respondents Ramanand etc had pleaded that the suit property was partitioned by Ram Dayal their father amongst his three sons namely Ramanand, Devi Chand and Chandgi Ram in equal share. To depict the respective portions of Ramanand, Devi Chand and Chandgi Ram, the respondents had relied upon site plan Ex.P1. On the other hand appellants did not place on record any site plan to depict the existing position of suit property at the time of institution of suit. In reply to aforesaid para no.3 of the plaint, the appellant no.1 Chabbil Chand etc in para no.3 of their written statement on merits had pleaded that suit property was mutually partitioned in the year 1977 in the life time of Ram Dayal. However, it has been further pleaded that as Ramanand and Devi Chand has shown their intention to settle permanently in the year 1977 both of them had relinquished their share in favour of Chandgi Ram and that in lieu of their share Ramanand and Devi Chand were given ancestral funds and ornament of their family. It is relevant to mention here that all the main witnesses examined by the parties have also deposed about the partition being effected during the life time of Ram Dayal and in consequence thereof separation of share of

Ramanand, Devi Chand and Chandgi Ram.”

Concluding part of the judgment of learned First Appellate Court, i.e. paragraph Nos. 17 and 18, are also worth to be taken note of, which are reproduced as under:-

“17. As the fact that during the life time of Ram Dayal the suit property had been partitioned amongst his three sons is admitted in the considered opinion of this court the learned lower court has rightly observed that the onus shifted upon the appellants to prove that respondents had relinquished their right in the suit property in favour of Chandgi Ram their brother. Further, though, specifically pleaded that in lieu of relinquishment of their share the respondents had been given ancestral funds and ornament out of joint family account but there is not an iota of evidence in this regard on behalf of appellants.

18. In view of aforesaid discussion, this court is of the view that after properly appreciating all the facts of the case as well as evidence on record learned lower court has rightly decided issues no.1 to 6 in favour of respondents. Henceforth while up-holding the findings recorded by ld. lower court on the aforesaid issues as well as the impugned judgment and decree, both the appeals are hereby dismissed with costs. Decree sheets be prepared accordingly. Copy of this judgment be placed on connected appeal. Copy of this judgment along with trial court record be sent back to court concerned and the appeal files be consigned to record room.”

15. In the arguments addressed before this Court, learned counsel for the appellant/defendant No. 1 has stated that once, there is an admission by plaintiffs themselves with regard to oral partition as well as possession of defendant No. 1 over the property in dispute, the suit ought to have been dismissed. For this purpose, learned counsel has referred to paragraph No. 12 of the judgment of learned First Appellate Court, which says as under:-

“12. On the other hand, it has been argued by learned counsel for respondents that the appellant Chabbil Chand etc in

their written statement have admitted the nature of the disputed property to be ancestral coparcenary property. Learned counsel has submitted that as appellant Mahesh Soni had started interfering in their possession over the suit property, they had instituted the suit for permanent injunction against him and thereafter the appellant No.1 Chabbil Chand etc by way of application under order 1 rule 10 CPC had impleaded themselves in this suit. Learned counsel has pointed out that the appellant Mahesh Soni in para no.3 of his written statement has alleged family settlement about 35 years ago but no date of said alleged family settlement has been mentioned. Further, as per learned counsel, the appellants have taken contradictory pleas as somewhere they have alleged mutual partition between the sons of Ram Dayal, whereas, somewhere they have referred to the family settlement. That the appellants No.1 Chabbil Chand etc in their joint written statement have denied that the suit property was partitioned amongst Ramanand, Devi Chand and Chandgi Ram etc in equal share. To counter the contentions of learned counsel for appellants regarding the testimonies of witnesses examined by them, learned counsel for respondents has pointed out that PW1 Ami Chand in cross examination has categorically stated that during the life time of father of Ramanand the suit property was orally partitioned. Also, he has stated that Mahesh Soni is in possession over the suit property only as a tenant and PW1 has further specifically denied that after the partition only Chandgi Ram is in possession of suit property. As per learned counsel DW1 Lakhmi Chand and DW2 Puran examined by appellants in cross examination have also admitted that suit property to be ancestral property of Ramanand, Devi Chand and Chandgi Ram. In cross examination he has specifically put site plan Ex.P1 to DW1 and DW2 respectively and they have deposed that in Ex.P1, the houses of parties have been correctly shown. Further, as per learned counsel DW3 Chander Parkash in cross examination has admitted that Ram Dayal had equally partitioned the suit property amongst his three sons Ramanand, Devi Chand and Chandgi Ram. He has also admitted that after the partition that Chandgi Ram, Devi Chand and Ramanand became owner in possession of their 1/3rd share in the property. Also, with regard to the contents of the affidavit furnished by him DW3 has stated that he has mentioned the above facts on the basis of hear-say.”

16. From a bare reading of above reproduced paragraph No. 12, it is evident that in the said para, only argument raised by counsel for the

plaintiffs/respondents has been noticed by learned First Appellate Court that PW-1 Ami Chand in cross examination categorically stated that during life time of father of Rama Nand, suit property was orally partitioned. Also, he has stated that Mahesh Soni is in possession over the suit property only as a tenant.

This part of the reference by learned counsel for the appellant/defendant No. 1 is not acceptable. Firstly, for the reason that no categorical admission has been pointed out from the statement of the plaintiff, by reading out the same before this Court.

Secondly, to prove his own possession by virtue of agreement to sell, neither any document/instrument of alleged transfer of possession has been produced or proved in any manner, nor defendant No. 1 – Mahesh Soni himself has stepped into witness box, to depose that he is in possession over the disputed property.

17. Judgments cited by learned counsel for the appellant/defendant No. 1, i.e. (i) Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and others (SC), Appeal (Civil) No. 6191 of 2001, decided on 25.03.2008; and (ii) Didar Singh v. Mohinder Singh (P&H), Law Finder Doc Id # 63720, are not applicable being different to the facts and circumstances of this case.

18. Taking note of the pleadings, evidence discussed by learned Courts below and the submissions addressed by learned counsel for the appellant/defendant No. 1 before this Court against the concurrent findings of fact, I do not find any reason to deviate from the view point of both the Courts below, which are well founded with reasons.

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No question of law, much less any substantial question of law, arises in the instant appeal for consideration of this Court.

Accordingly, by maintaining the impugned judgment and decree passed by learned Courts below, present appeal stands dismissed.

As a necessary corollary, all pending civil miscellaneous applications, including application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC, seeking condonation of delay of 45 days in filing the present appeal, are also dismissed.

(SANJAY VASHISTH)
JUDGE

September 19, 2023

Pkapoor

Whether Speaking/Reasoned: ✓YES/NO

Whether Reportable: ✓YES/NO