

135.

2024:PHHC:047178

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

RSA No.496 of 2024 (O&M)

Date of decision: 01.04.2024

Suresh Kumar

.... Appellant

Versus

Naresh Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Rajender Kumar, Advocate, for the appellant.

GURBIR SINGH, J.

1. Present regular second appeal has been filed by defendant No.1 against the judgment and decree dated 22.12.2023 passed by learned Additional District Judge, Panchkula whereby appeal filed by him against the judgment and decree dated 24.05.2017 passed by learned Civil Judge (Junior Division), Kalka, has been dismissed.

2. Brief facts that are necessary for the disposal of present appeal are that respondents No.1 to 4-plaintiffs filed a suit for separate possession by way of partition of suit property i.e. land measuring 3 biswas as mentioned in the head note of the plaint, on the ground that Bacchu Ram had died intestate leaving behind three sons and two daughters. Defendant No.1-appellant herein and defendant No.2 filed a joint written statement pleading that appellant constructed the house on the land in dispute in the year 1981 with the consent of his late father as he had looked after his father and mother throughout their lifetime. Bachhu Ram had died in the

year 1992 and suit was filed in 2015 i.e. after 23 years of the demise of Bachhu Ram. Defendant/respondents No.6 and 8 admitted the suit of the plaintiffs.

2.1 On the basis of evidence led on the file, the trial Court decreed the suit and preliminary decree for separate possession by way of partition of the suit property was passed in favour of plaintiff Nos.1 and 2 i.e. respondents No.1 and 2 as well as defendants No.1 to 3 i.e. appellant and respondents No.6 and 8 that they are owner to the extent of $1/5^{\text{th}}$ share each being legal heirs of Bachhu Ram. The preliminary decree passed on 24.05.2017 reads as under:-

“ It is ordered that the suit of the plaintiff is hereby decreed with costs to the effect that a preliminary decree for separate possession by ways of partition of the suit property is hereby passed in favour of plaintiff no.1 & 2 as well as defendants no.1 to 3 in equal share, meaning thereby, $1/5^{\text{th}}$ share of each legal heirs i.e. $1/5^{\text{th}}$ share each of (a) plaintiff no.1 Naresh Kumar, (b) plaintiffs no.2, 3, 4, (on behalf of the late husband Sh. Ramesh Chand, (c) defendant no.1 Suresh Kumar (d) defendant no.2 Sushma, (e) defendant no.3 Kamli. Decree sheet be prepared accordingly. File be consigned to the record-room after due compliance.”

Appeal filed by defendant No.1 was dismissed. Aggrieved, defendant No.1 has approached this Court by way of present appeal.

3. Learned counsel for the appellant has argued that Shri Bachhu Ram was the owner of the land to the extent of 6 biswas of land vide sale deed dated 24.08.1979 and out of said land, he sold 3 biswas vide sale deed

dated 27.12.1984 and gave the sale proceeds to the plaintiffs and remaining land of 3 biswas was given to the defendants. Thus, he during his lifetime had settled the entire issue, so the plaintiffs have no concern with the suit land.

4. I have heard learned counsel for the appellant and have gone through the file.

5. Neither there is any document nor it is mentioned in the sale deed dated 27.12.1984 that sale proceeds were being given to the plaintiffs by way of adjustment against the property being inherited by them. On the death of Bachhu Ram, mutation of suit property was sanctioned in favour of Ram Murti-wife and in the name of sons and daughters of Bachhu Ram. Except the oral version of the defendants, neither there is any evidence on record nor any writing that suggest the suit property was exclusively given to the defendants. Oral version is not rightly believed by the courts below. A co-sharer has every right to get his share separated by way of partition.

6. The courts below have recorded concurrent findings of facts. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The same is without any merit and is dismissed accordingly.

7. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

April 01, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No