

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**132****RSA No.2134 of 1989 (O&M)****Reserved on : 02.04.2024****Date of Decision : 29.04.2024**

Sadhu Ram (deceased) through LRs

....Appellants

VERSUS

Smt. Ram Rakhi and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Manuj Chadha, Advocate for the appellants.

Mr. M.L. Saini, Advocate for respondent No.1.

Mr. Ajay Ghangas, Advocate for respondent Nos.2 to 5.

ALKA SARIN, J.

1. The present appeal has been preferred by defendant No.1-appellant challenging the findings passed by the First Appellate Court vide judgment and decree dated 16.05.1989 reversing the judgment and decree dated 23.04.1987 passed by the Trial Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for separate possession by way of partition of three properties fully described in the head-note of the plaint. It was averred that the plaintiff-respondents and defendant-appellants were co-sharers in the suit property having inherited the same from a common ancestor i.e. Ishar Singh. It was further pleaded that the defendant No.1-appellant was threatening that he would sell the entire suit property and hence the suit. On notice defendant No.2 did not put in appearance and the suit was contested

only by defendant No.1-appellant. Preliminary objections were raised regarding court fees, jurisdiction, maintainability and estoppel. On merits it was denied that the plaintiff-respondent No.5, namely, Surinder Singh was the General Power of Attorney of plaintiff-respondent Nos.1 to 4. It was averred that the said Surinder Singh had no right to file the suit. It was also denied that the suit properties were joint. The stand taken by defendant No.1-appellant was that the possession of the defendant No.1-appellant in property No.A bearing Municipal No.1320 had matured into ownership on account of efflux of time. It was further the case that property No.B bears No.1306 and the defendant No.1-appellant was in possession from the inception and was also paying house-tax to the Municipal Committee. It was pleaded that the property originally was an old one and the defendant No.1-appellant had incurred heavy expenses to renovate the same and make it fit for habitation. Qua property No.C it was alleged that originally the property was mortgaged by Ishar Singh, the father of the defendant No.1-appellant, on 03.03.1938 with Brij Lal and the defendant No.1-appellant got it redeemed on 16.09.1941. Thereafter, improvements were made and hence it was averred that the defendant No.1-appellant had become the owner of the suit property. Replication was filed controverting the averments made in the written statement and reiterating those made in the plaint.

3. From the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether Surinder Singh plaintiff No.5 is authorized to file the suit on behalf of plaintiffs No.1 to 4 ? OPP

2. Whether the plaintiffs are in joint possession and owner to the extent of 1/2 share of the suit property ?
OPP
3. Whether the suit in the present form is not maintainable ? OPD
4. Whether the plaintiff is entitled to the partition of the suit property as prayed in the plaint ? OPP
5. Whether the suit has been properly valued for the purposes of court fee and jurisdiction ? OPD
6. Whether the plaintiffs are barred by their act and conduct to file the present suit ? OPD
7. Whether the suit is bad for non-joining of necessary parties ? OPD
8. Whether the plaint is signed by Hardev Singh, if not, its effect ? OPD
9. Whether the defendants have made improvements on the suit property ? If so, its effect ? OPD
10. Whether the defendant has become the owner of the suit property as alleged in the written statement ?
OPP
11. Whether the site plan produced by the plaintiff is incorrect ? OPD
12. Relief.

4. On issue No. 1 it was held that the plaintiff-respondent No.5 - Surinder Singh - was a duly appointed attorney of the plaintiff-respondent Nos.1 to 4. On issue Nos.2 and 10 i.e. the issue “whether the plaintiffs were

in joint possession and ownership to the extent of half share” and “whether the defendants have become owner of the suit property as alleged in the written statement” it was held by the Trial Court that the plaintiff-respondents and the defendants were owners to the extent of 1/2 share each. It was held that there was no evidence qua adverse possession and that in the year 1983 the defendant No.1-appellant herein had filed a suit qua property Nos.A and B. The said suit was for declaration and the stand taken by the defendant No.1-appellant himself was that the plaintiffs and the defendants were co-owners. Certified copy of the said judgment and decree are Ex.P7 and Ex.P8 on the record. Hence, qua the plea regarding property Nos.A and B it was held that the defendant No.1-appellant had not become owner by way of adverse possession. Regarding property No.C it was held that even though the property may have been redeemed, however, after redemption the property would have reverted only to Ishar Singh and on his death to the plaintiffs and the defendants. Accordingly, the issues were disposed off. It was, however, held by the Trial Court that the plaintiff-respondents were not in possession of their shares in the suit property and hence they should have filed the suit for possession and were not entitled to suit for partition. The suit was accordingly dismissed. Aggrieved by the judgment and decree passed by the Trial Court an appeal was preferred by the plaintiff-respondents and cross-objections were preferred by the defendant No.1-appellant herein. The First Appellate Court held that qua property Nos.A and B the plaintiff-respondents and the defendant No.1-appellant were co-owners as there was no evidence led by the defendant No.1-appellant herein qua adverse possession. It was further held that ouster was not proved and reliance was placed on the law laid down by the Full Bench of this Court in

the case of **Bhartu vs. Ram Sarup [1981 PLJ 204]** wherein it was held that the possession of a joint property by one co-owner in the eyes of law is the possession of all. As regards property No.C, the findings of the Trial Court were affirmed. The First Appellate Court thereafter held that the suit had wrongly been dismissed by the Trial Court having once held that the plaintiffs and the defendants were co-owners to the extent of 50% each and that the defendant No.1-appellant had not become owner of the entire property by way of adverse possession. The suit for partition was maintainable. Accordingly, the cross-objections were dismissed and the appeal was allowed vide the impugned judgment and decree dated 16.05.1989. Hence, the present regular second appeal by the defendant No.1-appellant.

5. Learned counsel appearing on behalf of the defendant No.1-appellant would contend that the defendant No.1-appellant had become owner by way of adverse possession of property Nos. A and B. It is further the contention that in the evidence of the plaintiff-respondents it had been deposed that he had never visited the place after his father's death and therefore it proves adverse possession. Qua property No.C it was contended that once the property has been redeemed by the defendant No.1-appellant he became owner of the same by efflux of time.

6. *Per contra* learned counsel for the plaintiff-respondents would contend that the defendant No.1-appellant had failed to prove that he had become owner of the property Nos.A and B by way of adverse possession. It is further the contention that qua property No.C both the Courts had concurrently held that once the property was redeemed it would be deemed to be redeemed in favour of Ishar Singh and on his death the plaintiff-

respondents and defendant No.1-appellant would have become co-owners of the same.

7. I have heard the learned counsel for the parties.

8. In the present case both the Courts concurrently found that while property Nos.A and B were concerned the defendant No.1-appellant had failed to prove that he had become owner of the suit properties by way of adverse possession. Ex.P7 is a copy of the judgment and decree dated 27.02.1985 passed in a suit filed by the defendant No.1-appellant himself stating therein that he and the plaintiff-respondents were co-owners of the suit property. Having taken that stand in the year 1985 and the judgment and decree having been passed in the said case on 27.02.1985, the argument of learned counsel for the defendant No.1-appellant that the defendant No.1-appellant has become owner by way of adverse possession cannot be accepted. In any case none of the ingredients of adverse possession have been proved by the defendant No.1-appellant. He has not been able to show ouster of the plaintiff-respondents from the suit property. Qua property No.C the learned counsel for the defendant No.1-appellant has not been able to convince this Court that the defendant No.1-appellant had become owner of the suit property by merely redeeming the mortgage. The property was mortgaged by Ishar Singh. It is not the case of the defendant No.1-appellant that he had purchased the mortgagee rights from the mortgagee. It is a specific case that he had redeemed the property. The First Appellate Court had held that principle of subrogation would apply and the defendant No.1-appellant could retain its possession till he is paid the share of the mortgage amount. However, he does not become the exclusive owner of the property to the exclusion of the plaintiff-respondents and defendant No.2. Learned

counsel for the defendant No.1-appellant has not been able to show any law to show that defendant No.1-appellant on redeeming the property would become the owner to the exclusion of the other co-owners. No other argument has been raised.

9. In view of the above, no question of law much less any substantial question of law arises in the present case. The present appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, stand disposed off.

(ALKA SARIN)
JUDGE

29.04.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO