

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

RSA-4258-1999 (O&M)
Reserved on: 30.08.2024
Pronounced on: 02.09.2024

KISHAN CHAND THROUGH LRS**. . . .APPELLANTS****Vs.****ASHA NAND AND ANOTHER THROUGH LRS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- None for LRs Nos. 1(i) and 1(iii) of the appellant.

Mr. Kartar Singh, Advocate, for LR No.1(ii) of the appellant.

Mr. Adarsh Jain, Advocate, for the respondents.

DEEPAK GUPTA, J.

Civil Suit No.247 of 1998 filed by sole plaintiff Kishan Chand (*now appellant through his LRs*) seeking partition of the suit property against his two brothers Asha Nand & Piare Lal (*now respondents*), was decreed by the trial Court of Id. Civil Judge (Jr. Divn.) Faridabad vide judgment & preliminary decree dated 26.09.1998. Civil Appeal No.31 of 1998 filed by defendants Asha Nand & Piare Lal was accepted by the First Appellate Court of Id. Additional District Judge, Faridabad vide judgment dated 14.09.1999, by holding that suit property already stood partitioned amongst the parties. It is against this reversal that the plaintiff approached this Court by way of the present Regular Second Appeal.

2.1 Admittedly, plaintiff Kishan Chand and defendants Asha Nand & Piare Lal are brothers. They along with their father Karam Chand constituted a Joint Hindu Family with Karam Chand as the *karta*. Karam Chand was allotted disputed property i.e. House No.2A/118A, NIT Faridabad, measuring 233 square yard vide conveyance deed dated 25.11.1965 by the Rehabilitation

Department. Karam Chand expired on 07.08.1967.

2.2 As per the case pleaded by the plaintiff, the construction on the plot allotted to Karam Chand was raised from the Joint Hindu Family funds and parties took possession of the separate portions in the house according to the convenience, though remained joint owners in joint possession of the house. As per the plaintiff, the black portion shown in the site plan was taken by him; portion shown in blue colour was taken by Asha Nand (*defendant No.1*), whereas the portion shown in red colour in the said plan came to the portion of defendant No.2-Piare Lal. Contending that plaintiff was in possession of an area with lesser potential comparing to the shares held by the defendants, he approached the Court for seeking a decree of possession of his 1/3 share in the house in dispute by way of partition.

2.3 The defendants though admitted that the parties constituted a Joint Hindu Family, of which their father was the *karta* and that suit property was allotted to their father, but disputed the factum of construction by the Joint Hindu Family funds. They further denied that parties were in separate possession as per the convenience or that the disputed house had not been partitioned earlier. According to defendants, the house in dispute was partitioned vide a written compromise in the year 1964 and the said instrument of partition was scribed by Wasan Ram, Deed Writer, which had taken place in the presence of respectables like Roshan Lal and Ram Sarup Virmani. Thus, as per the stand of the defendants, the parties were in possession of their respective shares in the house in dispute after partition thereof and therefore, the suit for partition was not maintainable.

2.4 Necessary issues were framed. Evidence produced by the parties was taken on record.

2.5 Learned Lower Court observed that conveyance deed regarding the house was executed in the year 1965 and therefore, the plea of defendants regarding the partition effected in 1964 could not be believed, particularly when the written compromise, as claimed by the defendants, was

not produced on record. Disbelieving the assertion of the defendants regarding the prior partition in the year 1964, the trial Court decreed the suit for partition, holding that plaintiff was entitled to 1/3 share in the suit property and accordingly, passed a preliminary decree to that effect.

2.6 In the appeal filed by the defendants, learned First Appellate Court found that though the conveyance deed regarding the house in favour of Karam Chand was executed in the year 1965, but in fact said property had been allotted to Karam Chand and the possession handed over to him as early as in the year 1952 and as Karam Chand was required to pay the balance amount through installments, therefore, the conveyance deed was executed later in the year 1965 only after the entire amount was paid. It was further observed that since the father of the parties had already acquired possession and allotment of the house and simple formality of execution of the conveyance deed remained to be carried out, therefore, partition of the house could be effected in the year 1964.

2.7 Ld. First Appellate Court further found that although the written instrument of partition of 1964, as referred by the defendants, had not been produced in evidence, but there was enough evidence on file, which clearly indicated that suit property already stood partitioned in 1964 during the lifetime of the father of the parties. By holding that suit property had already been partitioned, the appeal was accepted and suit of the plaintiff for partition was accordingly dismissed.

3.1 Assailing the aforesaid findings of the First Appellate Court, it is contended by Id. counsel for the appellant-plaintiff that in the absence of any document as referred by the defendants, the earlier partition of 1964 could not be believed and therefore, the first Appellate Court went in error in disbelieving the case of the plaintiff. Ld. counsel has referred to ***Satchidananda Samanta Vs. Ranjan Kumar Basu and others, 1992 AIR (Calcutta) 222.***

3.2 It is further argued by Id. counsel that simply because parties are

living in separate portions, that in itself does not mean that there has been severance of the joint status. Learned counsel referred to ***Rameshwar Dass Vs. Sardha Ram, 1994 (2) RRR 375.***

3.3 The further contention of Id. counsel is that suit for partition or rendition of an account by a son against his father in Punjab is not maintainable, as per the principles of Hindu Law by Mulla and so, alleged partition of 1964 is not reliable. For this proposition, Id. counsel refers to ***Sitara Lal Vs. Shiv Kumar and others, 1986 AIR (Punjab and Haryana) 112.***

3.4 With these submissions and contending that Id. First Appellate Court failed to appreciate the evidence in right perspective and wrongly set aside the judgment of the trial Court, prayer is made to restore the judgment of the trial Court by accepting this Appeal.

4. Refuting the aforesaid contentions, Id. counsel for the respondents-defendants defended the judgment passed by the First Appellate Court submitting that it is based on the proper appreciation of evidence and that though the document of partition could not be produced, but there was adequate evidence to prove the partition effected amongst the parties. Id. counsel prayed for dismissal of the appeal.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. As has been noted above that it is not in dispute that the parties constituted a Joint Hindu Family with their father Karam Chand as the *karta* thereof. It is also not in dispute that disputed house was allotted to Karam Chand by the Rehabilitation Department. Id. counsel for the appellant has not challenged the finding of the First Appellate Court to the effect that the house was allotted in 1952 and the possession was given at that time, though the conveyance deed was executed in 1965 and therefore, the partition, as claimed by the defendants, could be possible in 1964.

7. The only dispute is as to whether the suit property is still joint as

pleaded by the plaintiff; or whether the partition had taken place in 1964, as is claimed by the defendants.

8. In this regard it will be apt to reproduce the observations made by the First Appellate Court in para Nos.13 and 14 of the impugned judgment, which read as under: -

13. Simply because the defendants could not prove the written document in support of the factum of partition, their claim that they are in exclusive possession of their shares in the disputed house after partition, cannot be discarded. There are certain instances and documents which go a long way to prove that the parties are in exclusive possession of their shares in the disputed house after partition. Before coming to the relevant documents and the statements, it may be pointed out that when conveyance deed was executed in favour of Karam Chand, there were two rooms constructed in the property. Subsequently one more room was constructed by Sh. Karam Chand. Thus when the three brothers took separate exclusive possession in the house, there were three rooms and all of them had taken possession of one room each. DW3 Sh. Hari Chand, Clerk MCF, deposed from the house tax record of 1989-90 that house No.2-A/118-E was in the defendant No.2 Piare Lal consisting of two rooms each 10 feet x 10 feet, one kitchen 6 x 6 feet, one shop 8 x 8 feet and one latrine and bath room. property No.2-A/118F stood in the name of defendant No.1 Asha Nand consisting of two rooms measuring 10 x 7 feet and 10 x 12 feet, one kitchen 6 x 7 feet and one latrine and bath room and third property bearing No.2-A/118 was in the name of Kishan Chand consisting of two rooms measuring 10 x 14 feet and 10 x 8 feet. All these three properties are part of the house in dispute. All the three brothers are paying the house taxes separately in respect of the portions under their occupation, and they are also paying separate electricity bills in respect of their portions. DW4 Lal Chand was inducted as of tenant by plaintiff in one room of the portion falling to his share since 1984 at the rate of Rs. 200/- per month. DW5 Roshan Lal, is the relative of both the parties, who has also supported the factum of possession of the parties of different portions in the house in dispute after partition.

14. As already pointed out there were only three rooms in the house in

dispute and all the three brothers occupied one room each. As per statement of DW3, portions under possession of the three brothers had sufficient huge constructions. Much prior to 1989-90, defendant No.2 had added one room, one kitchen, one shop and one latrine and one bath room to his existing construction. Defendant No.1 Asha Nand had added one room, one kitchen and latrine/bath room to the existing construction, while plaintiff Kishan Chand had added one room to the already existing construction. If parties had not partitioned the house in dispute, it was not possible for them to raise much constructions in the portions under their possession. It was possible only when the parties acquired possession of their respective shares after partition. Failure of any of them to stop the other party from raising construction without partition is also one of the circumstances, suggesting that the parties were in possession of respective shares of the house in dispute under a partition. Though the separate house taxes, separate electricity connections and factum of tenancy of a room, may not be considered as instances of partition because such things are possible, when parties are in exclusive possession of different portions of the house with mutual consent, but at the *same* time, huge constructions raised by all the parties in the portion under their possession, unequivocally indicates that parties are occupying different portion of the house in dispute under a partition.”

9. The abovesaid observations made by the First Appellate Court clearly prove the partition effected amongst the parties in 1964. Said fact is proved not only by the oral evidence as produced by the defendants, but supported by various other evidence. So much so, in the house tax record, the three brothers are recorded to be in possession of separate portions, with separate municipal numbers. They are paying house tax separately and have separate electricity connections. Not only this, after partition, they raised construction over their respective shares clearly indicating the partition. The First Appellate Court has also noticed the additions, which were made by the parties in their respective portions.

10. The aforesaid findings of fact as recorded by the First Appellate Court, are based upon proper appreciation of evidence and this Court does

not find any reason to disturb these findings. No error is found to have been committed by the First Appellate Court in coming to the conclusion that suit property already stood partitioned amongst the three brothers i.e. the parties to the suit in the year 1964.

11. Coming to the authorities cited by learned counsel for the appellants, in ***Sitara Lal's case (supra)***, it was held that suit for partition and rendition of account by a son against his father in Punjab is not maintainable.

Said authority is not applicable to the facts of this case because in this case, the partition of the disputed house had taken place in 1964 during the lifetime of the father of the parties, who had expired in 1967.

12. In ***Rameshwar Dass's case (supra)***, it was held that if parties are living apart, that itself does not mean that there has been severance of joint status. In that case, it was found that it was not the case of the defendants that there had been any oral partition at some given time and therefore, to infer such a conclusion would tantamount to conjectural in nature.

Again this authority is not applicable because in the present case, there is not only assertion on the part of the defendants, there is cogent evidence to prove the partition amongst the parties of the suit property in the year 1964, as has been discussed above.

13. In the case of ***Satchidananda Samanta (supra)***, no document was produced regarding the partition and it was held that existence of previous partition was not proved. Besides, the plea that other co-sharer was in exclusive possession of some joint properties was held to be not determinative of the partition as the exclusive possession can be by virtue of amicable arrangement. It was further observed that seeking permission from the other co-sharers to make construction negated the plea of previous partition.

Again the cited authority is not applicable to the facts of the present case because in this case, as has been noted by Id. Additional District

Judge, based upon the evidence on file that the three brothers raised construction on their respective portions, which had come to them in the partition of 1964, without seeking any permission from each other. Not only this, their separate portions are duly recorded in the municipal record with different municipal numbers.

14. On account of the entire discussion as above, this Court does not find any merit whatsoever in the present appeal. Upholding the judgment and decree passed by the First Appellate Court, dismissing the suit of the plaintiff-appellant, present appeal is hereby dismissed, leaving the parties to bear their own costs.

02.09.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No