



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230

RSA-5351-2012 (O&M)
Date of Decision : 12.09.2024

Som Dutt (deceased) through LRsAppellants

VERSUS

Tejinder Singh and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arvind Kashyap, Advocate for the appellants.

Ms. Sanchi Bindra, Advocate for
Mr. Amar Vivek Aggarwal, Advocate for respondent No.1.

None for respondent Nos.2 to 4.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the defendant No.1-appellant challenging the judgment and decree dated 06.09.2011 passed by the Trial Court and the judgment and decree dated 02.02.2012 passed by the First Appellate Court.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration, possession, permanent injunction seeking possession by way of partition of the suit property i.e. a residential house marked by letters ABCDEFGH and shown in red colour in the site plan attached with the plaint, situated in village Boh, Teshil and District Ambala by metes and bounds and for permanent injunction restraining the defendant No.1-appellant herein from alienating the aforesaid residential house in any manner and further restraining defendant No.1-

appellant from interfering in any manner in the lawful and peaceful possession of the plaintiff-respondent No.1 over the agricultural land as described in the plaint. The case set up by the plaintiff-respondent No.1 was that he was posted as Lieutenant Colonel in the Indian Army at Jalandhar. The plaintiff-respondent No.1, defendant No.1-appellant and defendant-respondent Nos. 2 and 3 are siblings. Their father Ram Dass expired leaving behind all four of them as his legal heirs. The suit property in the shape of a residential house and agricultural land, which was earlier owned and possessed by Ram Dass, came to plaintiff-respondent No.1 and defendant No.1-appellant herein and defendant-respondent Nos.2 and 3. In a family settlement, defendant-respondent Nos.2 and 3 suffered a decree of declaration in favour of plaintiff-respondent No.1 and defendant No.1-appellant herein. However, the property was stated to be still joint in the hands of plaintiff-respondent No.1, defendant No.1-appellant and defendant-respondent Nos.2 and 3. Ultimately, the plaintiff-respondent No.1 and defendant No.1-appellant in a family settlement separated their agricultural land by way of a mutual partition and suffered a declaratory decree dated 11.08.1992 passed in Civil Suit No.634 of 08.08.1992. It was further the case that the defendant No.1-appellant herein wanted to grab the suit property exclusively owned and possessed by the plaintiff-respondent No.1. It was further averred that plaintiff-respondent No.1 is entitled to 1/4th share in the residential house and that the revenue entries in respect of Khasra No.50//10/2 are wrongly recorded in favour of defendant-respondent No.4. Defendant No.1-appellant in his written statement, besides the preliminary

objections, denied that plaintiff-respondent No.1 is the son of Ram Dass and contended that he has no concern with the suit property. It was further averred that plaintiff-respondent No.1 is the son of one Ram Rattan Bakshi, whose property he has inherited and in all his service record as well as matriculation certificate he is shown as the son of Ram Rattan Bakshi. The defendant No.1-appellant herein claimed to be the only son of Ram Dass. The defendant-respondent Nos.2 and 3 initially appeared before the Court. However, they did not file their written statements and their defense was struck off. Replication was filed reiterating the contents of the plaint and denying those of the written statement. On the basis of pleadings of the parties the following issues were framed:

1. Whether plaintiff is entitled to decree for possession by way of partition of the property in question as prayed for ? OPP
- 1-A. Whether plaintiff is entitled for the relief of declaration and permanent injunction as prayed for ? OPP
2. Whether present suit is not maintainable ? OPD
3. Whether plaintiff has no locus standi to file the present suit ? OPD
4. Whether present suit is liable to be stayed u/s 10 of CPC ? OPD
5. Relief.

3. The Trial Court decreed the suit vide judgment and decree dated 06.09.2011. Aggrieved by the same, an appeal was preferred which appeal was dismissed vide judgment and decree dated 02.02.2012. Hence, the present regular second appeal.

4. Learned counsel for the defendant No.1-appellant would contend that the plaintiff-respondent No.1 was the adopted son of Ram Rattan Bakshi and that he has no connection with the property of Ram Dass and that the defendant No.1-appellant was the only son of Ram Dass. It is further the contention that plaintiff-respondent No.1 was the biological son of the Ram Dass, however, he had been adopted by Ram Rattan Bakshi and in the matriculation certificate and the service record he is shown as son of Ram Rattan Bakshi.

5. *Per contra* learned counsel for plaintiff-respondent No.1 has contended that the contention regarding the plaintiff-respondent No.1 having been adopted by Ram Rattan Bakshi was raised for the first time at the stage of arguments and was not pleaded in the written statement and hence the said argument cannot be accepted in the absence of any pleadings.

6. I have heard learned counsel for the parties.

7. In the present case, the only argument raised by learned counsel for the defendant No.1-appellant is that the defendant No.1-appellant was the only son of Ram Dass and that the plaintiff-respondent No.1 was the adopted son of Ram Rattan Bakshi. In the written statement though a stand was taken that the plaintiff-respondent No.1 was the son of Ram Rattan Bakshi, however, it was nowhere stated that he was the adopted son. It is an admitted fact that the plaintiff-respondent No.1 and the defendant No.1-appellant herein had both filed a suit against their sisters i.e. Smt. Lajaya Devi and Smt. Gulshan for declaration. In the said suit jointly filed by both of them they have been shown as sons of late Ram Dass Bakshi and the suit was

decreed in their favour on the statement made by their sisters. Thereafter, another suit was filed by the plaintiff-respondent No.1 herein against defendant No.1-appellant herein wherein also both of them were shown to be sons of Ram Dass. The said suit (Ex.PZ-3) was also for declaration qua the agricultural land. The defendant No.1-appellant herein filed an admitted written statement which is on the record as Ex.PZ-4. Subsequently, the suit was decreed vide judgment (Ex.PZ-7). The argument of learned counsel for the defendant No.1-appellant that the plaintiff-respondent No.1 was the adopted son of Ram Rattan Bakshi cannot be accepted in view of what has been noticed above. The defendant No.1-appellant himself has been recognizing him as his brother and son of Ram Dass. Infact, in two rounds of litigation where both the plaintiff-respondent No.1 as well as defendant No.1-appellant were parties, no objection was raised by the defendant No.1-appellant that the plaintiff-respondent No.1 was not the son of Ram Dass.

8. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

12.09.2024
jk

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