

2024:PHHC:138231



113.

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

RSA No.20 of 2020 (O&M)

Date of decision: 21.02.2024

Manga Masih

.... Appellant

Versus

Ajaib Masih @ Jaibo Masih

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Amandeep Singh Manaise, Advocate, for the appellant.

GURBIR SINGH, J.

1. Present regular second appeal has been filed by the defendant against the judgment and decree dated 02.09.2019 passed by learned Additional District Judge, Gurdaspur whereby the appeal filed by the plaintiff (respondent herein) against the judgment and decree dated 16.02.2017 passed by learned Civil Judge (Junior Division), Gurdaspur, has been partly allowed, decreeing the suit for permanent injunction restraining the defendant from disposing of more than his share and particular side of the house in dispute.

2. The brief facts of the case are that the plaintiff-respondent filed a suit for partition of the house by metes and bounds as shown in the site plan, along with consequential relief of permanent injunction restraining the defendant from disposing off more than his share and

particular side of house in dispute as detailed in the head note of the plaint.

2.1 The plaintiff pleaded that he and defendant are owners of a plot measuring 9 marlas in equal share as purchased from Dharam Singh vide agreement to sell dated 12.06.1992. The plaintiff and defendant raised construction over the suit property to the extent of their shares by contributing the expenses. Plaintiff claimed that his share be partitioned as he is not being able to enjoy his share due to jointness of suit property, but the defendant is a head strong person and is threatening to dispose off suit property more than his share.

2.2 Upon notice, defendant appeared, filed written statement and denied the aforesaid averments and contended that he is the exclusive owner of the house in question and the plaintiff has no right, title and interest over it.

2.3 Before the trial Court, to prove his case, the plaintiff examined Sukhram Singh as PW1, who scribed the agreement dated 12.06.1992. He himself while appearing as PW2 had deposed about his possession over suit land and his version was duly supported and corroborated by attesting witness of agreement dated 12.06.1992, namely, Jagir Singh who while appearing as PW3, has identified the signatures on the agreement Ex.P1. He further examined Surjit Kaur, his mother and wife of defendant, as PW4, who stated that the house in question was purchased jointly by the plaintiff and defendant.

2.4 The plaintiff has placed on file copy of sale agreement dated 12.06.1992 as Ex.P1. PW1-deed writer of the agreement, deposed that said agreement was scribed at the instance of Dharam Singh in favour of plaintiff and defendant regarding the house in question. PW1 also stated that he entered the said agreement at serial No.381 of his register. But when said register was summoned, the entry of agreement, in question, was not found at serial No.381.

2.5 The defendant, while appearing as DW1, has argued that a mere execution of agreement of sale does not confer any proprietary right over the property.

2.6 Vide judgment and decree dated 16.02.2017, the trial Court, while dismissing the suit, held that the plaintiff failed to prove said agreement and in the absence of any proof of title or ownership over the house in dispute, the plaintiff cannot claim its partition.

2.7 In appeal filed by the plaintiff, the lower appellate Court reversed the findings of the trial Court regarding permanent injunction vide judgment and decree dated 02.09.2019. The relevant extract of said findings recorded by the lower appellate Court reads as under:-

“15. While filing the suit it is mentioned that he has purchased the plot of 9 marlas from Dharam Singh jointly with defendant, whereas there is no sale deed on record, rather agreement for sale is there on record. The agreement of sale cannot be considered to be a document of title. Hence, no partition can be ordered on the basis of said document.

16. Whereas the agreement of sale has been duly proved by bringing into the witness box the marginal witness Jagir

Singh who had proved writing Ex.P-1 the agreement of sale and further PW-1 Sukhram Singh Deed Writer had also produced on record whereby he has scribed the agreement of sale at the instance of Dharam Singh on 12.06.1992. Hence, the agreement of sale Ex. P-1 can be read only for collateral purposes. Therefore, trial court was wrong in dismissing the suit for permanent injunction also. As such the lower court judgment is set aside to the extent that the finding regarding the partition are upheld. No partition can take place, whereas suit for permanent injunction is decreed restraining the defendant from disposing of more than his share and particular side of the house in dispute.

17. In the light of above discussion, this Court is of the view that the instant appeal has some merit and the discretion exercised by the learned trial Court is perverse for all aforesaid reasons. This Court finds ground to interfere with the impugned judgment and decree. The instant appeal is, consequently, partly allowed with no order as to costs. Decree sheet be prepared. It is ordered that the suit for permanent injunction is decreed restraining the defendant from disposing of more than his share and particular side of the house in Trial Court record alongwith a copy of this judgment be returned. Appeal file be consigned to the record room after due compliance.”

2.8 Against the findings of the lower appellate Court with regard to permanent injunction, the defendant has approached this Court by way of present appeal.

3. Learned counsel for the appellant-defendant has argued that the plaintiff failed to prove sale agreement dated 12.06.1992. Its entry was not found in the register, as deposed by PW1. It is contended that when the plaintiff failed to prove his title over the house in question, he cannot be granted permanent injunction restraining the appellant not to sell more than his share and particular side of the house in dispute.

4. I have heard the submissions of learned counsel for the appellant.

5. The case of plaintiff is based on agreement to sell Ex.P1 which is in favour of plaintiff and defendant in equal share. It is well settled that agreement to sell does not confer any title. Since neither plaintiff nor defendant is owner of the suit property, so learned courts below have rightly held that suit property cannot be partitioned. From the evidence brought on the file, it is proved that parties are in joint possession of the suit property. The defendant cannot part with the possession of more than his share in the suit property and defendant has no right to part with the particular side of the suit property/house in favour of any other person.

6. The findings recorded by the lower appellate Court are hereby affirmed. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The appeal is without any merit and is dismissed accordingly.

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

(GURBIR SINGH)
JUDGE

February 21, 2024
sanjeev

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