

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1060-2020 (O&M)
Pronounced on:05.03.2024

Sukhdev Raj

...Petitioner

Versus

Hans Raj and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Ms. Kiranpreet Kaur, Advocate (Legal Aid Counsel) and
Mr. Sumit Sharma, Advocate (Legal Aid Counsel)
for the appellant.

RITU TAGORE, J. (Oral)

1. This is an appeal against the concurrent findings recorded by the learned Courts below, dismissing the suit of petitioner for possession by way of partition of a house, detailed in the plaint.
2. For convenience, the parties are referred to as per their original status before the learned trial Court.
3. The plaintiff, Sukhdev Raj, brought the suit for possession by way of partition of a house measuring 175 Sq . Yards, bearing No.3233/14 situated in Gali No 7, Wadda Haripura, Amritsar with the boundaries as detailed in the head note of the plaint.
4. In brief, plaintiff pleaded that parties to the suit are owners and in possession of their respective shares in the house in dispute. Plaintiff is in possession of a room measuring 8'6"X13'x4", situated at backside of the room of Dev Raj (defendant No.4). The disputed house is jointly owned by the parties to the suit. The plaintiff alleges that defendants are querulous individuals, who frequently engage in disputes with him without cause. In an effort to maintain peace, he wants to separate his possession. He requested

the defendants to partition the house by metes and bounds but they have refused, necessitating him to file the suit.

5. As evident from the judgment of trial Court, defendant No.1 appeared and filed his written statement denying all the averments made by the plaintiff. Defendants No.2 and 4 did not appear, while defendant No.3 was reported to have died, with no LRs appearing on his behalf to contest the suit.

6. From the pleadings of the parties, learned trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for possession by way of partition as prayed for? OPP

2. Relief.”

7. To support his version, Sukhdev Raj, the plaintiff appeared as PW-1, and reiterated the version of the plaintiff. Rakesh Kumar appeared as PW-2 and supported the version of the plaintiff. To counter the plaintiff's version, Soma Wanti wife of Hans Raj appeared as DW-1 and testified according to the stance outlined in the written statement.

8. Upon appraisal of the evidence, learned lower Court observed that plaintiff failed to substantiate his averments by his own material admissions and failed to establish that he is in joint ownership and possession of the disputed house.

9. The learned counsel for the petitioner contended that learned Courts below failed to properly appreciate the evidence presented on record. The learned Courts failed to note that parties to the *lis* are real brothers who inherited the disputed house from their father Amin Chand. The Courts below also failed to appreciate a material admission made by Soma Wanti-DW-1, testifying that plaintiff, alongwith defendants, his brothers jointly

reside in the disputed house. It is stated that there is no better evidence to a fact than the admission. Learned counsel stated that learned Courts below seriously erred in ignoring the admitted factual position with regard to joint ownership and possession of the disputed house and wrongly focused on the statement made by the plaintiff. Furthermore, it is argued that suit for partition should not be dismissed due to non-joinder of the parties, as necessary parties can always be impleaded later. Learned counsel stated that there was no justification to deny the relief of partition and prayer is made to set aside the judgments of Courts below and suit of the plaintiff be decreed.

10. I have heard learned counsel for the petitioner and gone through the paper book and hold that the Courts below have rightly non-suited the appellant for the reasons stated below.

11. Firstly, there is a categorical admission made by the plaintiff that he is seeking partition of the house bearing No.3233/14 and in the same breath admitted that aforementioned house, for which he is seeking partition, is owned by the neighbours. It is appropriate to reproduce the findings of learned trial Court recorded in this regard, wherein cross-examination of the plaintiff has been reproduced verbatim. The observations of the learned trial Court as contained in para No.12 are as under-

“After considering the same, this Court have noticed that plaintiff has given his residential address stating resident of house no. 3232, Gali No.7, Wadda Haripura, Amritsar. From the head note of plaint, it is clear that, the plaintiff has sought partition of house no. 3233/14 meaning thereby both the house no. 3232 and 3233/14 are different properties. In para no. 1 of the plaint, the plaintiff pleaded that he alongwith defendants is owner in possession of the house detailed in the head note of the plaint. There is no pleading in the plaint that how the plaintiff and defendants became owners of the house bearing no.3233/14. The plaintiff himself appeared as PW-1 and also examined PW-2 Rakesh Kumar. Except the bald statements of plaintiff and PW-2 there is no other evidence on the file from which it can be opined that the plaintiff and

defendants are joint owner of the property in dispute. It is relevant to see the cross-examination of plaintiff Sukhdev Raj which is reproduced as under:-

"I have not mentioned the exact measurement of property in dispute in my affidavit XXX we are seven brother and sisters. All are married. I am not in possession of property in dispute. XXX I have not placed on file any ownership document of the property in dispute. It is correct that in the plaint suit property is described as 3233/14 which is the house of neighbourer. Neither I nor Hans Raj is in possession over house bearing no. 3233."

12. Secondly, the plaintiff also made an unequivocal admission that he has seven brothers and sisters. The Courts below categorically observed that plaintiff did not implead all his brothers and sisters the co-sharers, in the disputed house, who are necessary parties to be impleaded in a suit for partition. Law is settled that in a suit for partition all the co-sharers are necessary parties. They must be impleaded in a suit for partition. On this score the suit of the plaintiff was defective and was not maintainable. To my view, the learned Courts below have rightly dismissed the suit of the plaintiff on this basis.

13. Thirdly, the plaintiff when filed the suit for partition, he recorded his residential address as house No.3232, Gali No.7, Wadda Haripura, Amritsar and sought partition of a house No.3233/14. In the plaint plaintiff claimed ownership and possession of the house mentioned in the head-note of the plaint along-with other defendants. Both the Courts noted that plaintiff made no reference in the pleadings and failed to explain how he and other defendants became owner of house No.3233/14 except making the bald statement. The learned Courts below, considering the admission of the plaintiff (as highlighted above) and in absence of evidence regarding ownership and possession of the plaintiff of the disputed house, answered the relief against him. The learned counsel for the plaintiff also failed to show to this Court any document establishing the ownership and possession

of the plaintiff over the disputed house, bearing No.3233/14 regarding which partition has been sought. Consequently, learned Courts below rightly concluded that plaintiff failed to produce cogent and reliable evidence to discharge the onus of issue No.1 which heavily rested upon him.

14. When confronted with the deposition of the plaintiff as reproduced above and relied by the learned Courts below, learned counsel for the plaintiff, failed to identify any discrepancies in the same. Furthermore, during course of arguments, learned counsel for the plaintiff failed to point out any misreading or misinterpretation of the evidence by the learned Courts below before non-suiting the plaintiff (appellant). In view of above discussion, it is held that the learned Courts below rightly appreciated the evidence and dismissed the suit of the plaintiff.

15. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity or absurdity.

16. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

17. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

18. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

05.03.2024
Rimpal

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