

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-943-2021 (O&M)
Date of decision:29.02.2024

Rajkali & others

... Appellants

Vs.

Gyasi Ram & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Aditya Jain, Advocate for the appellants.

...

SUKHVINDER KAUR, J.

1. This is a regular second appeal filed by the defendants against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was decreed.

2. Brief facts of the case as per plaint are that father of the plaintiff, defendants No.2 and 3 and father-in-law of defendant No.1 late Budh Ram had purchased a piece of *gair mumkin* land/plot comprising in khewat/khata No.3/09/B/3 (1-1), kita 1, total measuring 1 kanal 1 marla (635 square yards) situated within the revenue estate of village Jharsa, Tehsil and District Gurgaon from Shimbhu Dayal S/o Chiranji Lal vide sale deed No.245 dated 01.05.1970. Budh Ram deceased distributed some part/portion of land/plot approximately 400 square yards after leaving a passage for ingress and egress amongst the plaintiff and defendants in equal share during

his lifetime and kept other portion of land i.e. about 120 sq. yards for the purpose of his residence. He constructed a *pucca* residential house in his share in the year 1977 and further renovated it in the years 2005 and 2013. The defendants constructed their residential houses in their respective shares in the year 1982 and since then they were lawful owner in possession of the residential houses. Portion of the plaintiff is shown in green colour, portion of Chunni Lal in pink colour, portion of Kudiya Ram in blue colour, portion of Rajkali in orange colour and the disputed portion is shown in red colour in the site plan attached along with the plaint. Budh Ram died on 17.11.2000 leaving his share i.e. approximately 120 sq. yards un-partitioned which is shown in red colour in the site plan. Budh Ram during his lifetime constructed a *baithak* in some portion in the said 120 sq. yards which was in his possession. The plaintiff and defendants being legal heirs of the deceased Budh Ram were entitled to inherit the said portion/plot in equal shares i.e. $\frac{1}{4}$ share each. When plaintiff was at village Noor Nagar, Teshil Kishangarh, District Alwar, Rajasthan then he came to know on 20.12.2014 that defendants had demolished the *baithak* without information and permission, which was possessed by late Budh Ram. On coming to his house at village Jharsa, plaintiff found that defendant No.1 was digging the foundation in the disputed land which had not been partitioned till date. On 23.12.2013, plaintiff called a meeting with the defendants for getting the plot/land in question partitioned in the presence of respectables of village Jharsa, but the defendants were not ready for the same. On 18.01.2014, defendant No.1 again started construction work on the disputed land and raised a wall upto

2-3 feet i.e. upto DPC level. The plaintiff asked the defendants to stop the construction work till the land/plot in dispute is partitioned but the defendants remained adamant. Hence, the present suit was filed.

3. Vide judgment and decree dated 28.01.2015, suit of the plaintiff was decreed. Aggrieved of the said order defendants filed an appeal before the First Appellate Court which was dismissed vide judgment and decree dated 13.08.2019. Hence, the defendants No.1 to 5 and 7/appellants have knocked the doors of this Court by way of filing the present Regular Second Appeal.

4. I have heard learned counsel for the appellant and gone through the records thoroughly.

5. Learned counsel for the appellant has contended that both the Courts below have failed to consider that the suit was filed by the plaintiff in collusion with defendants No.6, 8 and 9 just to grab the portions of the properties of the appellants/defendants. It has not been considered that plaintiff/respondent had not come to the Court with clean hands and concealed the true and material facts from the Court. He intentionally and deliberately did not disclose the entire properties which were owned and possessed by late Budh Ram and mentioned only regarding one property in his suit. The other three properties were mentioned by the defendants in their written statement along with the site plans Ex.D1 to D3. The Courts below gave undue weightage to site plan Ex.D3 by stating that the defendants had concealed the factum of construction of the rooms in the land of Ex.D3, but failed to take into consideration that this property has not been referred to by

the plaintiff in his suit. The Courts below have also mis-interpreted the evidence of DW12 Kudiya Ram. Budh Ram was living with Mahipal and Mahipal constructed a *baithak* out of his portion of 60 sq. yards for residence of Budh Ram and this version was also supported by DW2 Jai Lal who had constructed the said *baithak*. He has submitted that it has also not been considered that a family settlement and mutual agreement took place between the parties during the lifetime of Budh Ram by virtue of which Giasi Ram/respondent No.1/plaintiff was given specific portion shown in green colour in the site plan attached with the plaint besides one more property marked by letter 'IJKL' shown in the site plan attached with the written statement and Mahipal husband of appellant No.1 and father of appellants No.2 to 5 was also given specific portion shown in orange and red colour towards northern side in the site plan attached with the site plan. Similarly Chunni Lal respondent No.2/defendant No.6 was also given specific portion from the suit property. Kudiya Ram/defendant No.7 was also given specific portion shown in blue and red colour in the site plan attached with the plaint. Now one property was un-partitioned which was marked as 'ABCD' in the site plan attached with the written statement. He has argued that all these facts have not been mentioned by respondent No.1/plaintiff before the Court and as such they are guilty of suppressing the material facts. He has further argued that as such the findings recorded by the Courts below on issues are against facts and law and the impugned judgments are liable to be set aside.

6. This fact is not disputed that Budh Ram had purchased a piece

of land measuring 635 sq. yards as detailed in para No.1 of the plaint.

7. It is also the admitted fact that Budh Ram had not partitioned his entire property amongst his sons during his lifetime and he retained some portion of property for himself. It is also the admitted fact that Budh Ram during his lifetime resided in his own *baithak*/constructed area and he was not residing in the houses of any of his sons shown in the site plan Ex.P2. Apart from oral evidence, there is no documentary evidence regarding the partition.

8. DW1 Kudiya Ram defendant No.7 had stated during his cross-examination that there exist rooms in the land shown in the site plan Ex.D3, whereas as per the site plan Ex.D3 filed by defendants No.1 to 5 and 7, it has been shown to be a vacant plot. DW1 besides admitting construction of the rooms in the land shown in the site plan Ex.D3 also stated that the said rooms had been constructed by those who have got the share in the said land. It is not the case of defendants No.1 to 5 and 7 that the rooms existing in the land shown in the site plan Ex.D3 were ever constructed by late Budh Ram. Since the land Ex.D1 and D2 was given to Giasi Ram and defendant No.6 Chunni Lal at the time of partition, so they could not have constructed the rooms in the land shown in the site plan Ex.D3 and there are no pleadings to that effect. Rather the defendants have concealed the fact of construction of rooms in the land shown in the site plan Ex.D3 by filing the incorrect site plan by showing it to be a vacant plot. DW1 Kudiya Ram has also stated that all the four sons were having their houses in the land measuring 400 sq. yards and further voluntarily stated at his own that each

of the four brothers were given 100 sq. yards in partition and thus virtually admitted the case of the plaintiff as alleged in para No.2 of the plaint that approximately 400 sq. yards of the land out of the total land purchased by Budh Ram was distributed amongst the plaintiff and his brothers, namely, Mahipal, Chunni Lal and Kudiya Ram and the remaining land measuring 120 sq. yards was kept by Budh Ram for his residential purpose.

9. No question of law much less substantial question of law arises for determination in the present second appeal. Accordingly, the appeal is without any merits and is hereby dismissed.

10. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

29.02.2024

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |