



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

111**RSA-314-2019 (O&M)****Date of Decision : 05.08.2024**

ARPAN

.... Appellant

VERSUS

JAMNA DEVI & ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mrs. Ravinder Kaur Manaise, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by defendant No.2-appellant aggrieved by the judgment and decree dated 27.11.2015 passed by the Trial Court and the judgment and decree dated 05.07.2018 passed by the First Appellant Court.

2. Brief facts relevant to the present *lis* are that one Chandi Ram was the original owner of the suit property i.e. house measuring 80 feet x 40 feet i.e. 12 Marlas i.e. 48/4768 share of total land measuring 59 Kanals and 12 Marlas comprised in Khasra No.738 (59-12) situated at Street No.2-3, Gobind Nagri, Abohar. After his death, Chandi Ram was survived by his wife Jamna Devi (plaintiff-respondent No.1) and two sons, namely, Baldev Parkash (plaintiff-respondent No.2) and Prem Parkash – predecessor-in-interest of the defendants. The case set up by the plaintiff-respondents No.1 and 2 was that they were in joint possession of the house along with the defendants and that the defendants had started ill-treating the plaintiff-respondents No.1 and 2 and they had also filed a false suit for permanent

injunction against plaintiff-respondent No.1 with an intention to eject her from the house in question. Hence, the suit for separate possession of the suit property as well as permanent injunction.

3. Defendants No.1 and 2 filed a joint written statement and counter-claim raising preliminary objections that a suit for separate possession by way of partition was not maintainable as a similar suit is already pending and further that the present suit was a counter-blast to two earlier civil suits titled 'Kailash Rani V/s Jamna Devi' bearing suit No.125-1 of 29.07.2010 and 'Kailash Rani V/s Jamna' bearing suit No.115-1 dated 23.04.2010. It was further the case set up that Prem Parkash (predecessor-in-interest) of the defendants had raised a loan on an area measuring 40 feet x 40 feet from Market Committee, Abohar and that he had made improvements of more than ₹10,00,000 (rupees ten lakh) in the said area and that the plaintiff-respondents No.1 and 2 wanted to grab the said amount. In the counter-claim the case set up was that the defendants are the owners in possession of half share of house No.7656/M situated at Sukhera Basti, Abohar measuring 347-8 square yards which was allotted in the name of Chandi Ram and after the death of Chandi Ram the sale certificate was wrongly issued in the name of plaintiff-respondent No.1 and that the said property was purchased from the joint Hindu family funds and for separate possession by way of partition of the said property as well as for restraining the plaintiff-respondents No.1 and 2 from alienating the suit property. It was also pleaded that there was agricultural land also comprised in Khasra Nos.174, 175, 179, 180 and 709 situated in Village Balluana, Tehsil Abohar

and that the same was also purchased out of the Hindu Undivided Family funds. Defendant No.4 filed a separate written statement raising preliminary objections that a suit for separate possession by way of partition was not maintainable. On merits it was averred that the plaintiff-respondents No.1 and 2 have no cause of action and *locus standi* to file the present suit.

4. Replication was filed controverting the averments made in the written statements and reiterating those made in the plaint.

5. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are entitled to separate possession as claimed ? OPP
2. Whether suit is not maintainable in the present form ? OPD
3. Whether the defendant Nos.1 and 2/counter claimants are entitled to declaration as prayed for ? OPD
4. Whether the defendant Nos.1 and 2/counter claimants are entitled to separate possession as claimed ? OPD
5. Whether the defendant Nos.1 and 2/counter claimants are entitled to injunction as claimed ? OPD
6. Whether defendant Nos.1 and 2 have no cause of action and locus standi to file the present suit ? OPP
7. Relief.

6. The Trial Court vide judgment and decree dated 27.11.2015 decreed the suit for separate possession and a preliminary decree was passed

for partition of suit property comprised in Khasra No.738(59-12), Khewat No.1880 situated at Street No.2-3, Gobind Nagri, Abohar by determining the following shares – plaintiff-respondent No.1 has 4/9th share; plaintiff-respondent No.2 has 1/3rd share and defendants No.1 and 2 have 1/9th share each in the suit property i.e. 48/4760 share of total land measuring 59 Kanals 12 Marlas comprised in Khasra No.738 (59-12), Khewat No.1880 situated at Street No.2-3, Gobind Nagri, Abohar. The counter claim was dismissed. Aggrieved by the same an appeal was preferred by defendants No.1 and 2 which appeal was dismissed by the First Appellate Court vide judgment and decree dated 05.07.2018. Hence, the present regular second appeal by defendant No.2-appellant.

7. Learned counsel for defendant No.2-appellant would contend that the two properties i.e. one house and agricultural land, as mentioned in the counter-claim were purchased out of the joint Hindu family funds and hence the same also ought to have been included in the partition.

8. Heard.

9. In the present case both the Courts have concurrently found that there was not an iota of evidence which was led on the record to show that the two properties as mentioned in the counter-claim were purchased out of the joint Hindu family funds. Defendant No.1 - Kailash Devi - did not even step into the witness box to rebut the claim of the plaintiff-respondents No.1 and 2. In the absence of any evidence to the effect that the purchase was out of the joint Hindu family funds, no fault can be found with the judgments and decrees passed by both the Courts. There is no cogent and reliable

evidence available on the record to show that the joint Hindu family funds were utilized to purchase the property. No other point has been urged.

10. In view of the above, I find no merit in the present appeal. No question of law much less substantial question of law arises, for determination in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

05.08.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*