

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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RSA No.3914 of 2023 (O&M)  
Reserved on : 13.03.2024  
Date of Decision : 01.04.2024

Om Singh & Anr.

....Appellants

VERSUS

Sham Singh & Anr.

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Ajaivir Singh, Advocate for the appellants.

**ALKA SARIN, J.**

1. The present regular second appeal has been preferred by the defendant Nos.1 and 2 (defendant-appellants) against the judgement and decree dated 31.01.2017 passed by the Trial Court and judgement and decree dated 07.08.2023 passed by the First Appellate Court. The Trial Court decreed the suit of the plaintiff-respondent No.1 and the appeal of the defendant-appellants was dismissed by the First Appellate Court.
2. The plaintiff-respondent No.1 filed a suit for declaration with consequential relief of permanent injunction. It was pleaded that the plaintiff-respondent No.1 along with the defendant-appellant No.1 constituted a joint Hindu family and that the plaintiff-respondent No.1, the defendant-appellants and the proforma defendant were owners of certain properties. Since there remained constant disputes between the parties regarding the ownership of the said joint Hindu family properties, a family

settlement-cum-arrangement took place on 10.10.2011 between the parties wherein the joint Hindu family properties were partitioned. The plaintiff-respondent No.1 and the proforma defendant became owners in possession of the following properties :

- ⇒ One House No.48 situated in Old Ramesh Nagar, Karnal measuring 260 square yards as per registered sale deed no.13597/1 dated 29.03.2005
- ⇒ One shop having area 35 square yards situated in Dhakka Basti, Karnal as per registered sale deed no. 6686/1 dated 07.01.2004
- ⇒ One factory of agricultural implements (House) having area 260 square yards situated at Gogripur Road ahead Bhagwaria Gas Agency, Karnal as per registered sale deed no.13433/1 dated 24.03.2005.

Similarly, the defendant-appellants became owner in possession of House No.56 situated in Jarnailly Colony, Karnal having area 249 square yards vide registered sale deed no.4516/1 dated 10.09.2001. The actual physical possession of the properties as per the settlement had taken place and it was agreed between the parties that necessary changes would be made in accordance with family settlement in due course of time. It was submitted that due to wrong entries in the revenue record, the defendant-appellants started asserting their rights in the suit properties which had fallen to the share of the plaintiff-respondent No.1 and the proforma defendant. Hence, the suit. The defendant-appellants contested the suit and filed joint written statement taking preliminary objections regarding maintainability, cause of action, clean hands, locus standi, estoppel, jurisdiction, concealment of facts and misjoinder and nonjoinder of necessary parties. On merits it was denied

that any family settlement dated 10.10.2011 had taken place and the same was a result of fraud and that no partition had taken place between the parties. It was pleaded that there was litigation going on between the parties and that there was no joint Hindu family between the parties.

3. On the basis of the pleadings of the parties the Trial Court framed the following issues :

1. Whether the plaintiff is entitled to a decree for declaration as prayed for ? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled for relief of permanent injunction as prayed for ? OPP
3. Whether the plaintiff has no locus-standi and cause of action to file and maintain the present suit ? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
5. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary and proper parties ? OPD
6. Relief.

4. Vide judgement and decree dated dated 31.01.2017 the Trial Court partly decreed the suit of the plaintiff-respondent No.1. It was ordered that the plaintiff-respondent No.1 and the proforma defendant were entitled to protect their exclusive and admitted possession over House No.48, Old Ramesh Nagar, Karnal and the defendant-appellants have no right to forcibly dispossess the plaintiff-respondent No.1 and the proforma defendant from the property in their possession. The defendant-appellants were further

restrained from changing the nature or altering or selling the joint property in excess of their share. The defendant-appellants filed an appeal against the judgement and decree of the Trial Court. The plaintiff-respondent No.1 filed cross-objections. However, vide judgement and decree dated 07.08.2023 the First Appellate Court dismissed the said appeal as well as the cross-objections. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellants has contended that the Courts have erred in partly decreeing the suit of the plaintiff-respondent No.1. It is argued that the family settlement dated 10.10.2011 was not proved and therefore there was no occasion to partly decree the suit of the plaintiff-respondent No.1 and protect the possession.

6. I have heard learned counsel for the defendant-appellants and perused the paperbook.

7. The plaintiff-respondent No.1 had set-up his ownership and possession over the suit properties on the basis of a family settlement dated 10.10.2011. The original of the said family settlement was not produced by the plaintiff-respondent No.1 on the premise that the same was with the defendant-appellants. The copy of the family settlement on the record is an unregistered document. The Trial Court held that the family settlement required compulsory registration as per Section 17 of the Indian Registration Act, 1908 and since it was not registered the division of the properties between the parties on the basis of the family settlement could not be taken into consideration and by necessary implication the properties between the plaintiff-respondent No.1 and the defendant-appellants are still joint. Thus, no declaration qua ownership of the plaintiff-respondent No.1 over the suit

properties was given. The defendant-appellants can have no possible objection to this.

8. However, since the possession of the plaintiff-respondent No.1 and the proforma defendant over House No.48, Old Ramesh Nagar, Karnal was admitted by the defendant-appellants in their pleadings, the Courts have protected their possession. Counsel for the defendant-appellants has been unable to persuade this Court not to protect the possession of the plaintiff-respondent No.1 and the proforma defendant after the defendant-appellants had themselves admitted their possession over House No.48, Old Ramesh Nagar, Karnal. Nothing has been pointed to establish the exclusive possession of the defendant-appellants over the suit properties. For grant of an injunction the Court is concerned only with possession and the prayer for injunction will be decided with reference to the finding on possession. That being the position, this Court finds no illegality in the judgements and decrees of both the Courts which in effect only protect the possession. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

( ALKA SARIN )  
JUDGE

01.04.2024

Ankur

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