



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

107

**RSA-1331-1994 (O&M)
Date of decision : 05.02.2025**

Sultan

..... Appellant

versus

Sada Ram (since deceased) through his LRs and ors. ...Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. M.L. Sarin, Senior Advocate with
Ms. Himani Sarin, Advocate
for the appellant.

Mr. Sumit Sangwan, Advocate
for respondent No.1(iii).

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate and
Mr. Sahil Mehendiratta, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal aggrieved of judgment and decree passed by the Courts below.
2. Plaintiff filed suit seeking decree of declaration to the effect that he is owner of the land in dispute and further sought decree of possession seeking directions to the defendant to hand over vacant possession of the suit property. Plaintiff claimed that suit property bearing khasra No.369 and 399 was jointly owned by plaintiff, Ishwar and Man Singh. They were in possession to the extent of equal share in one half of the property. The other half portion of the property was owned and possessed by Ram Kunwar s/o Lacchi Ram. All the co-



sharers sold part of the property adjoining road. The co-sharers got engaged in *lis* which was compromised on 31.03.1981. As per the terms of the said compromise, Ram Kunwar co-sharer came in possession of part of khasra No.369. Man Singh came in possession of 64 feet wide property adjoining road, in which he constructed 06 shops. Ishwar co-sharer came in possession of 101 sq. feet wide plot in which 10 shops are there. Plaintiff got 33 sq. feet of the property adjoining road, in which 03 shops have been constructed. 17 feet each paths were left to go behind. The same has been depicted with red colour in the site plan. Plaintiff filled foundation of his plot. Contesting defendants purchased land from Ishwar vide registered sale deed dated 22.09.1981 and started raising construction. The same was objected to by the plaintiff. The matter went to police station.

3. Plaintiff claimed that the plot which came to his possession has been possessed by the defendant and sought decree of possession.

4. Suit was contested by defendant No.1, who claimed that plaintiff has already sold more than his share. No compromise was arrived at between Ishwar and Man Singh as claimed. Ishwar is in possession of disputed land marked by 'H' since the very beginning. Ishwar sold land on the basis of his ownership to the contesting defendant for a valuable sale consideration of Rs.21,000/-. Possession was handed over to the answering defendant, who has constructed a room and boundary wall in the same. Construction was completed by 02.08.1983. Thus, the present suit filed on 29.11.1984 was beyond limitation.



5. On the basis of pleadings, Court of the first instance framed following issues:-

- “1) Whether the plaintiff is owner in possession of the suit land? OPP
- 2) If issue No.1 is proved, then whether the defendants No.1 & 2 are not exclusive owners and in possession of the suit land even after its sale from Ishwar, defendant No.3, as alleged in the plaint? OPP
- 3) Whether there was a compromise on 31.3.1981 between the plaintiff and defendant No.3 as alleged in para No.3 of the plaint and the plaintiff thereafter became owner in possession as alleged in para No.7 of the plaint? OPP
- 4) Whether the plaintiff has disposed of the land out of the khewat exceeding his share if so, to what effect? OPP
- 5) Whether the defendants No.1 & 2 are bona fide purchases for consideration, if so, to what effect? OPD
- 6) Whether the plaintiff has no locus-standi to file the present suit ? OPD
- 7) Whether the suit is not maintainable in the present form ? OPD
- 8) Whether the suit is filed in collusion with the defendant No.3, if so, to what effect? OPD
- 9) Whether the suit is bad for non-joinder of necessary parties? OPD
- 10) Whether the plaintiff is estopped by his act and conduct to file the present suit ? OPD
- 11) Whether the suit is barred by limitation? OPD
- 12) Whether the respondent is liable for the contempt ? OPA
- 13) Relief.”

6. While deciding issue No.1, 3 and 4, Court of the first instance relied upon Ex.P-4 compromise propounded by the plaintiff to hold that plaintiff is owner of the suit land. Even though partition deed between plaintiff and defendant No.1 has not been proved, but the



plaintiff being already owner of the suit land, is entitled to possession. The aforesaid findings have been affirmed by the Lower Appellate Court holding that defendant No.1 could not prove that the plinth area was constructed by him, as he could not even spell out the mark of the bricks used by him. It was further held that the appellant purchased only 5/588 share in the land owned by Ishwar and Ishwar was incapable of handing over possession of his share to the appellant-defendant without there being partition. Lower Appellate Court held that the appellant cannot be said to be in possession of any portion of the land in dispute. Affirming findings on issue No.1, 3 and 4, Lower Appellate Court decreed the suit and dismissed the appeal preferred by the defendant.

7. Learned Senior counsel for the appellant while assailing the findings recorded by the Courts below submits that Ex.P-7 was not admissible, yet Courts below have heavily relied thereupon to decree the suit filed by the plaintiff. Scribe of P-7 is non-else, but the grand son of Sada Ram. This all shows that P-7 was constructed by plaintiff in collusion with Ishwar. Ishwar sold the plot to defendant-appellant and father Sada Ram has filed the present suit. The present *lis* is nothing, but a collusive ploy at the hands of Ishwar-the son and Sada Ram-the father to defeat the right of a bonafide purchaser i.e. the appellant. Mr. Sarin further submits that the present suit filed beyond 03 years from the date of sale deed is barred by limitation.

8. *Per contra*, senior counsel for the respondents submits that the Courts below have rightly decreed the suit filed by the plaintiff. In order to prove his lawful possession, defendant was required to prove



that his vender was in possession of the land. He failed to do so. Courts below rightly relied upon Ex.P-4 and Ex.P-7 to prove that the joint land was partitioned between the co-sharers and the suit land fell to the share of plaintiff, who constructed the same upto plinth level.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. Sale deed in favour of the plaintiff was executed by Ishwar on 22.09.1981. The present suit was instituted on 29.11.1984. Plaintiff in order to claim partition, relies upon Ex.P-4. Trial Court while answering issue No.1 held that the partition deed between plaintiff and defendant No.3 has not been proved, observing as under:-

“17. xx xx xx

In view of this, it is held that the plaintiff is owner of the suit land and the defendant Nos. 1 and 2 are in possession of the same after its purchase in the year 1983. The partition deed between the plaintiff and defendant No.3 has not been proved, but the plaintiff was already owner of the suit land. It is not proved that the plaintiff has sold the total land out of the disputed khewat, Hence, issue No, 1 is partly decided in favour of plaintiff and partly against the defendant and issue no.3 is decided in favour of defendants and issue No. 4 15 decided in favour of plaintiff and against the defendants.”

11. Likewise, while answering issue No.2 and 5, Trial Court observed as under:-

“18. Onus to prove both these issues was upon the plaintiff and the plaintiff is to prove that the defendant no.1,2 were not the exclusive owner and his possession over the suit land even after its sale from Ishwar. Onus to prove issue no.5 was upon the defendants and they are to prove that they are the bonafide



purchaser. In view of my above discussion, it is clear that defendant No.3 was having no right over the suit land and, therefore, he cannot alienate the same, but the possession has been obtained by defendant Nos. 1 and 2 and they have also raised some construction over the suit land, with regard to the bona fide purchaser, the defendants have not placed any record that they have enquired from the Vender that he was the absolute owner of the suit land and defendant No.3 can only transfer the rights, which he was having at the time of sale, hence issue no.2 15 partly decided in favour of plaintiff and partly against the defendants while, issue no 5 is decided in favour of plaintiff and against the defendants.”

12. The Lower Appellate Court has affirmed the findings relying upon Ex. P-4. The same has been held to have been proved merely on the testimony of deed writer without even examining Ishwar, who was only impleaded as proforma defendant. Lower Appellate Court made out a case in favour of the plaintiff which was not even pleaded observing as under:-

“xx xx xx

In the third place, when Sada Ram was arrested, it appears that defendant Sultan and others forcibly raised the construction and they did so on their own risk.”

13. In view of above, this Court finds that the Courts below erred in law in decreeing the suit filed by the plaintiff for possession against the co-sharer without even ascertaining the date on which the co-sharer/plaintiff claims to have been dispossessed. Reliance upon agreement Ex.P-7 is also misplaced. Even if the same is held to be admissible in evidence, the same has been found to be extremely deficient for mode of proof. Once the Courts below reached at the conclusion that partition deed has not been proved and the appellant is in possession in his status as a co-sharer on the strength of sale deed



dated 22.09.1981, the present suit for possession was not maintainable. The only course open to the plaintiff was to seek separate possession by way of partition by meets and bonds. Thus, the Courts below erred in decreeing the suit which was not even maintainable.

14. In view of above, this Court finds that the findings recorded by the Courts below being unsustainable in the eyes of law deserves to be set aside.

15. As held by Supreme Court in its five Judges Bench in the case of *Pankajakshi vs. Chandrika (2016) 6 SCC 157*, there is no requirement to frame substantial question(s) of law.

16. As a sequel of the discussion held hereinabove, the present appeal is allowed. Judgment and decree passed by the Courts below are hereby set aside. Suit filed by the plaintiff is ordered to be dismissed for the aforestated reasons.

17. Ordered accordingly.

18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

05.02.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No