



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 142 of 2022 (O&M)
Date of Decision: 08.01.2025

Jugal Kishore

..... Appellant

Versus

Nirmal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Harkirat Singh Randhawa, Advocate
for the appellant-plaintiff.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 14.02.2020 and 07.04.2021 passed by the respective Courts of Additional Civil Judge (Senior Division), Sirsa **(hereinafter to be referred as “trial Court”)** and Additional District Judge, Sirsa **(hereinafter to be referred as “First Appellate Court”)**, whereby a suit for partition filed on behalf of the appellant-plaintiff stands dismissed.

[2] Briefly stating, the appellant-plaintiff filed a suit for partition *qua* three godowns bearing old M.C. No. 8/131/new M.C. No. SRS B-8/171, godown damaged premises bearing old M.C. No. 8/133/new M.C. No. SRS B-8/173-A and godown damages premises old M.C. No. 8/135/new M.C. No. SRS B-8/173 (B), situated at Gali Dhana Katli Wali, Neharia Bazar, Sirsa, claiming 1/5th share therein being successor of deceased-Banwari Lal

(father). It was pleaded that respondent Nos. 1 to 4-defendant Nos. 1 to 4 being brothers of appellant-plaintiff were entitled for 1/5th share each, whereas the fifth brother, i.e. respondent No. 5-defendant No. 5 (Bimal Kishore) having already settled his rights, was not entitled to any claim in the subject property.

[3] A detailed written statement was filed on behalf of all the defendants except defendant Nos. 3 (ii) and 3 (iv), who were later proceeded against *ex parte*. In the written statement, it was pleaded that on an earlier occasion as well, the appellant-plaintiff filed a similar suit for declaration and partition during the life-time of Banwari Lal; though the said suit was dismissed by the trial Court vide judgment and decree dated 16.01.1982, however, on an appeal preferred by the appellant-plaintiff, a settlement was arrived at between the parties on 30.01.1985, whereby the appellant-plaintiff was given one godown bearing No. 3645 alongwith a sum of Rs. 20,000/- in cash as full and final settlement and thus, the present suit was not maintainable.

[4] On the basis of pleadings of the parties, the trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled for a decree of partition, as alleged? OPP*
2. *Whether suit is not maintainable in the present form? OPD*
3. *Whether suit has not properly valued for the purpose of court fee? OPD*
4. *Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
5. *Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD*

6. *Whether plaintiff has concealed the true and material facts from the court? OPD*
7. *Relief. ”*

[5] The trial Court, vide its judgment and decree dated 14.02.2020, dismissed the suit, filed at the instance of appellant-plaintiff.

[6] Aggrieved thereof, the appellant-plaintiff filed first appeal, which also came to be dismissed vide judgment and decree dated 07.04.2021 passed by the First Appellate Court. Hence, the present appeal.

[7] Impugning the aforesaid judgments and decrees passed by the Courts below, learned counsel for the appellant-plaintiff submits that both the Courts below went wrong while discarding the entries made in the house-tax assessment, wherein the suit properties were recorded to be under the joint ownership of appellant-plaintiff as well as defendant Nos. 1 to 4 and thus, the suit for partition filed at the instance of appellant-plaintiff being co-owner to the extent of 1/5th share, was required to be decreed.

No other argument has been raised on behalf of the appellant-plaintiff.

[8] After hearing learned counsel for the appellants and having gone through the paper-book / records, I am unable to find substance in the submissions made on behalf of the appellant-plaintiff.

[9] In the humble opinion of this Court, in view of the law laid down by the Hon'ble Apex Court in cases (1) ***“Mohan Lal Versus Nand Lal” reported as 2018 (5) SCC 459*** and (2) ***“R.V.E. Venkatachala Gounder Versus Arulmigu Viswesaraswami & V.P. Temple and others” reported as 2003 (4) RCR (Civil) 704***, the entries recorded in the

municipal records pertaining to house-tax cannot be taken to be as proof of ownership; thus, the submission made on behalf of appellant-plaintiff is devoid of merit. The relevant para-25 of the judgment in case of **R.V.E. Venkatachala Gounder (supra)** is extracted hereunder:-

“25. From the other documents produced by the appellant i.e. the account books and Exhibit A34 rent note, it is proved that tenant had always been treating the appellant as landlord and paying rent to him. Only after 1969 tenant started paying rent to the temple treating it to be the landlord. In the property tax register the appellant and prior to that his predecessors have been shown to be the owners. An entry in the municipal record is not evidence of title. The entry shows the person who was held liable to pay the rates and taxes to the municipality. The entry may also, depending on the scope of the provision contemplating such entry, constitute evidence of the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes. If the property belonged to the temple, there is no reason why the temple would not have taken steps for having its own name mutated into the municipal records and commencing payment of taxes or claimed exemption from payment of taxes if the charity was entitled under the law to exemption from payment of taxes. Temple has not been able to produce any evidence oral or documentary to prove its title to the property. Only because tenant attorned to the temple and started paying rent to the temple in 1969 or that the temple paid the property tax to the municipal committee after 1969 does not establish its title to the property in question. These documents are not of much evidentiary value as these documents came in existence after the

dispute had arisen between the parties. In the absence of any other lawful claimant the appellant on the strength of the documents produced by was rightly held to be the owner by the Courts below the High Court. Attornment by the tenant in favour of the temple was also rightly held to be invalid. The appellant, in our opinion, would be entitled to recover possession well as the arrears of rent.”

[10] Furthermore, upon appreciation of evidence available on record in the form of statement of appellant-plaintiff himself in the previous litigation, which has been proved as Ex. D-2, wherein he admitted the factum of settlement and also having received in lieu thereof one godown bearing property No. 3645 alongwith a sum of Rs.20,000/- in cash from his father-Banwari Lal (deceased), consequentially he left his rights in the suit property in favour of his other brothers. It may also be relevant to note here that the appellant-plaintiff never made the afore-mentioned property bearing No. 3645 as subject matter of the present suit and thus, cannot be permitted to blow hot and cold in the same breath. Besides it, the appellant-plaintiff was rightly non-suited on account of concealment of afore-stated material facts from the Courts below regarding previous litigation with his father and the settlement arrived therein.

[11] As such, in view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of the fact recorded by the Courts below, there being no ignorance or any mis-interpretation pointed out towards the pleadings and the evidence available on record; the present appeal being devoid of merits, the same is hereby **dismissed**.

[12] Pending miscellaneous application(s), if any, shall also stand disposed off.

January 08, 2025
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>