

(2014) 09 P&H CK 0153

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4457 of 2014 (O&M)

Chandu Lal

APPELLANT

Vs

Rajender and Others

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2015) 177 PLR 390

Hon'ble Judges : Arun Palli, J

Bench : Single Bench

Advocate : Arvind Singh, Advocates for the Appellant

Judgement

Arun Palli, J.—Suit filed by the plaintiff was dismissed by the trial Court vide judgment and decree dated 02.03.2013. Appeal preferred against the said decree failed and was accordingly dismissed vide judgment and decree dated 18.01.2014. That is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit. In a suit filed by plaintiff (Chandu Lal), he prayed for a decree for injunction restraining the defendants from interfering in his peaceful possession over the portion marked as EFGHID, shown in red colour in the site plan, which was a part of a residential House No. 150, Mohalla Jacobpura, Tehsil and District Gurgaon.

2. In short, the case set out by the plaintiff was that his father Duli Chand was the owner of the suit property i.e. a house. Post his death on 28.07.2002, plaintiff and the two defendants, being his sons, succeeded to the suit property in equal shares. Therefore, the plaintiff was the owner to the extent of 1/3rd share along with the defendants who are his real brothers. And pursuant to an oral partition between the parties, portion EFGHID had fallen to the share of the plaintiff and he is in actual, physical possession thereof. Though, he is not in possession of an area more than his share/entitlement, yet the defendants intend to dispossess the plaintiff, and thus the suit.

3. In defence, it was pleaded by the defendants that besides the parties to the suit, deceased late Duli Chand was also succeeded by his three other sons, two daughters and his widow. And the alleged oral partition was denied.

4. The trial Court, on an analysis of the matter in issue and evidence on record found that indeed Duli Chand was survived by six sons, two daughters and a widow. His other heirs were not arrayed as party to the suit. That being so, in the replication, plaintiff sought to plead that he was the absolute owner of the suit property pursuant to a Will executed by Duli Chand. Not just that, in his cross-examination, he deposed that in fact, there was a Will in favour of his children and they were the owners of the suit property. There was inherent contradiction in the case set out by the plaintiff and none of the Wills were ever produced. Nothing was brought on record to show that the suit property was ever partitioned amongst the heirs of Duli Chand. Accordingly, suit filed by the plaintiff was dismissed.

5. Being aggrieved, the plaintiff preferred an appeal. First Appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof. Besides merits, the learned First Appellate Court also took cognizance of the fact that the language used by the appellant-plaintiff in the grounds of appeal was quite shocking and contemptuous. Be that as it may, it was observed that plaintiff did not array all the heirs of Duli Chand as parties to the suit. And when this was unraveled in the written statement, he claimed to be the exclusive owner on the basis of a Will. In his cross-examination he deposed that his sons were the owners pursuant to a Will. Insofar as his prayer for amendment of the plaint, on a comprehensive analysis of the material on record, it was observed that the trial Court had rightly declined the said prayer. Application was made at a highly belated stage, when evidence was already led and the matter was at a final stage. And the same was aimed to delay the matter. Thus, the order dated 02.03.2013 did not suffer, from any illegality or irregularity. Accordingly, the appeal was dismissed. Thereafter, even a review petition filed by the plaintiff was also dismissed vide a detailed order dated 07.05.2014.

6. I have heard learned counsel for the appellant and perused the RSA paper book.

7. Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the two Courts below and were rejected after due consideration. He submits that his application seeking amendment of the plaint was wrongly rejected by the trial Court as the amendment prayed for was significant in context of the issue involved. To my mind, the argument being advanced lacks conviction and is untenable. As observed above, First Appellate Court had considered this aspect at length and concluded that prayer was aimed to delay the matter and if the amendment that is being prayed for, is granted, it would alter the nature of the suit and the relief being claimed. Further, the

application was made at the final stage when the evidence was already concluded. The order dated 02.03.2013 declining amendment has not been placed on record and even no ground assailing the said order is raised in this appeal. Concededly, Duli Chand was the absolute and exclusive owner of the house in question. Admittedly, he was survived by not just the parties to the suit, but his three other sons, two daughters and his widow. The other heirs were never arrayed as parties to the suit. In fact, this was never even disclosed in the suit. That being so, the claim of the plaintiff that he was the owner of the house in question to the extent of 1/3rd share, having succeeded thereto along with the defendants, was wholly misconceived. In the presence of other heirs, neither he could claim to be the owner of 1/3rd share nor claim any partition between him and defendants. Likewise, he could not even claim to be in exclusive possession of portion marked as EFGHID as there were other co-sharers and there was never any partition amongst them. So much so, plaintiff even failed to prove that there was ever any partition even between the parties to the suit. Having realised so, he sought to plead a Will in his favour and then in favour of his sons. None of the purported Wills were produced on record. In the absence of any testamentary disposition by Duli Chand, all his heirs succeeded to his estate i.e. parties to the suit and his other three sons, two daughters and his widow. Thus, ex facie, the suit filed by the plaintiff was wholly misconceived and not maintainable. That being so, there hardly exists any ground, least plausible in law, to interfere with the conclusions that have concurrently been recorded by both the Courts below. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.