

(2014) 01 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1554 of 1987

Roshan Lal and Others

APPELLANT

Vs

Khazanchi Lal and Others

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Citation : (2014) 01 P&H CK 0080

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The plaintiff-respondents filed a suit for possession by way of partition and permanent injunction as consequential relief thereof on the averments that after the death of Jagdish Ram, who was the owner of the property as detailed in the plaint, they have become the owners to the extent of half share and plaintiffs No. 2 to 6 and defendant No. 1 have become the owner of the remaining half share. Defendant No. 1 sold some portion of the property as mentioned in the plaint to Kapoor Chand son of Jug Lal (represented by defendants No. 2 to 11) who are threatening to take forcible possession of the whole property in dispute to which they have no right title or interest. According to the plaintiffs, they were in possession of three rooms of the property in dispute which are joint and has not been partitioned. It is the further averment of the plaintiffs that defendants No. 2 to 11 wanted to raise construction over the property in dispute which was more than their share and thus, necessity arose to file the instant suit. In the written statement filed on behalf of the defendants, it was alleged that Kapoor Chand had purchased the property in dispute by way of registered sale deed dated 7.6.1972 for consideration of Rs. 4000/- from Amrit Lal defendant, who was the owner of the said property. The site plan was also attached along with the sale deed showing his area of ownership and sold to Kapoor Chand. Since then, they were in possession of the area shown in the site

plan attached with the sale deed and thus, their possession was legal but the defendants denied the fact that the property was joint. According to them, they were exclusive owner of the property sold to Kapoor Chand by defendant No. 1 and was not joint. It was further averred on their behalf that they had already raised construction over the property in dispute even before filing of the suit and they have not raised any construction over the property in dispute after issuance of ad interim injunction. Thus, certain other legal objections were raised and dismissal of the suit was prayed for.

2. While decreeing the suit for partition, the trial Court held that Hukum Chand had left behind plaintiffs No. 2 to 7 and defendant No. 1 and therefore, out of half share which Hukum Chand derived in the house, it was to be divided equally between the seven LRs. left behind by him and therefore, Amrit Lal could have transferred 1/14th share in the house to which the appellants were entitled to, whereas plaintiffs No. 2 to 7 were entitled to 5/14th share and the LRs. of deceased Jagdish Ram were entitled to remaining half share equally inter se and thus, preliminary decree for partition was passed.

3. Feeling aggrieved from the aforesaid judgment and decree of the trial Court, the defendants filed an appeal before the First Appellate Court which was also dismissed. While dismissing the appeal, the First Appellate Court observed as under:

Therefore, it may be stated that there is absolutely no dispute that the deceased owned the aforesaid house and he was survived by his two sons namely Des Raj and Hukam Chand, Obviously the ownership of the house went 1/2 each to each of the sons and further the issues of the sons and daughters of each branch shall equally divide between themselves the half share and not beyond that. This is an accepted principle of succession that after the property is divided per capita to each heir the share falling to each of the sons would be taken as prescribe by his issues. Therefore, the evidence led by the appellants consisting of the statements of Amrit Lal (DW6) and that of Roshan Lal (DW1) that they have been in possession of particular portion of the house would not be of any avail as the property is to be partitioned according to the shares of the each co-sharer. So, the evidence led by the appellant consisting of the statement of Hari Ram DW1 is of a formal mature and relates to the sale deed; statement of Sher Singh (DW2) relates to the death of Shri Des Raj; that of Bhagwan Dass relates to the execution of the sale deed; Roshan Lal (DW3) has only described the facts mentioned above and has not stated anything and DW6 is Amrit Lal who sold away his share. Therefore, in these circumstances, the shares arrived at by the learned trial Court that the appellants are entitled to 1/14th share in the said house is absolutely correct and there is not even a word from the appellant side that the shares have been wrongly worked out nor has he pointed out any clerical mistake or anything else, I was therefore, I mentioned above that there was not much of controversy in the case and that no substantial question of law and fact is involved. Hence the findings on issues No. 1, 3, 4, 2-A and 2-B as

arrived at by the learned trial Court are affirmed.

4. Still not satisfied, the appellants have filed the instant appeal which was admitted for regular hearing.

5. Learned counsel for the appellants has submitted that the following substantial questions of law arise in this appeal for consideration of this Court:

(i) Whether the judgments and decrees of the courts below are perverse being based on assumptions and presumptions without there being any evidence much less admissible evidence to prove that the plaintiffs have any right in the suit property, which admittedly has been purchased by the Appellant and also got the mortgage redeemed?

(ii) Whether the suit filed by the plaintiffs for possession by partition was maintainable when there is no evidence on record to prove that they have semblance of right in the suit property?

(iii) Whether the plaintiffs have to stand on their own legs to establish their right to claim possession of the suit property and cannot take any benefit of any lacuna in the evidence led by the defendants?

(iv) Whether under the facts and circumstances of the case, the judgments and decrees of the courts below are legally sustainable, being totally perverse?

6. In support of this case, the only plea raised on behalf of the appellants was noticed by this Court vide its order dated 23.7.2013 which reads thus:

In this case, plea of the defendants-appellants to the effect that a partition has already taken place between the parties and they are in exclusive possession, has not been accepted by the courts below.

Learned counsel for the appellants states that if the parties are in a settled position for a long period then it is to be presumed that a partition has taken place between them. He wants to cite law to support the aforesaid argument.

List on 6th August, 2013.

To be shown in the Urgent list.

7. Today, no one is present on behalf of the respondents.

8. I have heard learned counsel for the appellants and perused the record.

9. In support of the contentions raised on behalf of the appellants and as noticed on 23.7.2013, counsel for the appellants has relied upon a judgment of this Court in Ajmer Singh Vs. Dharam Singh, and a Division Bench judgment of this Court in Harbhajan Singh and others v. Financial Commissioner, Cooperation, Punjab, Chandigarh and others 2009 (3) RCR (Civil) 563.

10. However, it may be noticed that the aforesaid judgments as relied upon by the counsel for the appellants do not support his case in any manner. Neither any

such argument, as raised, in the instant appeal was raised in the judgments referred to nor any such proposition of law has been laid in the aforesaid judgments as sought to be argued before this Court.

11. A perusal of the aforesaid judgments would further show that in the aforesaid cases, the private partition between the parties was proved on record whereas in the instant case, there is no such finding.

12. No other argument has been raised.

13. Thus, the substantial questions of law, as raised, do not arise at all. Dismissed.