



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
126

RSA-2172-2024(O&M)
Date of decision: 08.09.2025

Harbhajan Singh

...Appellant(s)

Vs.

Bachan Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ankit Kharbanda, Advocate
for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by plaintiff against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the appellant for joint possession of 1/5th share out of the suit house measuring 2.5 marlas as described in the head note of the plaint, has been dismissed by both the Courts below.

2. Brief facts of the case are that the appellant/plaintiff had filed suit for joint possession of 1/5th share out of suit house measuring 2.5 marlas described in the head note of the plaint situated within Lal Lakir. The plaintiff had also sought consequential relief of permanent injunction restraining the defendants from alienating the suit property during the pendency of the suit. The plaintiff and defendants are close family members inasmuch as the 4



defendants are the mother, brother, and sisters of the plaintiff. Originally father of the parties namely Manohar Singh was owner of the suit property through Conveyance Deed (Ex.P2). Manohar Singh had died on 01.06.2011 leaving behind the plaintiff and the defendants as his only legal heirs. He had died intestate and suit property was inherited by the plaintiff and defendants in equal share to the extent of $1/5^{\text{th}}$ share each. Accordingly, it was pleaded that the plaintiff was co-sharer to the extent of $1/5^{\text{th}}$ share in the suit property. With these pleadings, instant suit was instituted on 18.09.2014.

3. Upon appraisal of pleadings and documentary & oral evidence, vide impugned judgment and decree dated 03.08.2018, learned Civil Judge (Junior Division), Amritsar had dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Amritsar vide impugned judgment and decree dated 15.03.2024. Hence, present second appeal by the plaintiff.

4. It is inter alia submitted by learned counsel for the appellant/plaintiff that the learned Courts below have failed to consider that the admission is the best evidence as, in the present case, the respondents/defendants have admitted the claim of the appellant with regard to $1/5^{\text{th}}$ share in the suit property. However, the learned Courts below instead of decreeing the suit of the appellant on that basis, have dismissed the same. It is further submitted that the observation of the learned lower Courts below that the boundaries as mentioned in the Conveyance Deed



(Ex.P2) does not tally with the boundaries as mentioned in the site plan (Ex.P1), is not sustainable especially when the respondents have admitted the description of the property and there exists no dispute between the parties with regard to the description of the property. It is further submitted that the Id. Courts below have also failed to appreciate the evidence-PW1 Balwinder Kumar being led by the appellant, who has admitted in his cross-examination regarding the ongoing dispute between the appellant and the respondents in relation to the suit property. It is accordingly submitted that the impugned judgments and decrees of the learned Courts are based on conjectures and surmises and deserve to be set aside.

5. No other argument is made on behalf of the appellant.

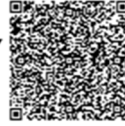
6. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

7. The plaintiff had filed "*Suit for joint possession of 1/5th share out of property/house measuring about 2.5 marlas double storey house consisting two rooms, kitchen, toilet, bath room, lobby on the ground floor and one room, kitchen, terrace on the first fully shown as red in the site plan attached situated within Lal Lakeer of Verka Tehsil and District Amritsar; with consequential relief of permanent injunction restraining the defendants from alienating, selling, mortgaging or transferring the suit property in any manner.*" Admittedly, the plaintiff and defendants are residing together. To prove his case, the plaintiff had tendered into evidence Conveyance Deed



(Ex.P2) through which suit property was allotted to his father. However, a perusal of Ex.P2 shows that 2.5 marlas of area is not mentioned in the Conveyance Deed. The plaintiff had also placed on record site plan (Ex.P1). However, the boundaries mentioned in the Conveyance Deed (Ex.P2) were different from the boundaries mentioned in the site plan (Ex.P1). Needless to say, under Section 101 of the Evidence Act, onus was upon the plaintiff to make out and prove his case. However, in view of the contradictory evidence produced by the plaintiff, he was held not entitled to grant of decree. The First Appellate Court had affirmed the above-said findings of the learned trial Court. The relevant findings of the Id. First Appellate Court as contained in Para 17 of the judgment dated 15.03.2024 are reproduced hereinbelow:-

“17. Perusal of the file reflects that in order to prove its case the appellant/plaintiff has examined four witnesses. PW1 Balwinder Kumar. PW2 Mohan Lal, PW3 Harbhajan Singh and PW4 William Masih. Perusal of the evidence of PW1 reflects that he is the person of the same locality, who states that Manohar Singh was owner of the property in question and after his death, parties of the suit are entitled for ownership to the extent of 1/5th share, Cross examination of said witness categorically reflects that witness admitted that there is a dispute between appellant/plaintiff and defendants with regard to the property in question, in which they are living. The said witness also admitted with regard to the maintenance granted by the Sub Divisional Magistrate in favour of the respondent cum defendant no.1. However, witness further categorically stated that he does not know whether respondents cum defendants have ever been



threatened by the appellant plaintiff regarding throwing them out of the suit property. The witness admitted that appellant/plaintiff and respondent cum defendant no.1 have several times quarrelled with each other and he has also become surety of the appellant/plaintiff when the matter was put before the police and surety bond has to be furnished. Next witness is Mohan Lal whose examination-in-chief in the shape of affidavit has been tendered in evidence but said witness has never come present for his cross examination. Further appellant/plaintiff has examined himself as PW3 and has brought on record site plan Ex.P1, conveyance deed Ex. P2 and has claimed his ownership qua to the 1/5th share. Perusal of the cross examination of said appellant plaintiff categorically reflects that he alongwith his family i.e. his wife and two sons, respondent cum defendant no.1 and one Veer Kaur are residing in the said house. The said witness admitted that property is of his father. In cross examination when question has been asked that how much is his share, then he states that it is 1/5th. Further Id.counsel for the respondent cum defendant no. 1 has specifically put the question that it 1/5th share is given to you, then whether you will withdraw the case and on this appellant/plaintiff has given his consent and thereafter evidence was deferred. Further when plaintiff/appellant again came in cross examination, then he categorically stated that in the property in question, some of the portion is with appellant/plaintiff and some of the portion is with his mother and other portion is with is sister-in-law. The witness has also been cross examined qua to the fact that when the matter was sent to the mediation center, then why compromise has not been got effected as respondents are ready to give him



1/5th share, but no satisfactory reply has come on record qua to the same. Further another witness William Mash drafts who has prepared the site plan has been examined. Said witness has categorically admitted that he has no such document to prove on record with respect to his qualification. The witness admitted that in the site plan total area has not been mentioned. Further to counter the evidence of the appellant/plaintiff, the respondent cum defendant no.1 has been examined as DW1. Said witness has brought on record conveyance deed Ex. P2 and other documents Mark 'A' to mark 'G' reflecting the complaints moved to various authorities including the police etc. During cross examination of the said respondent cum defendant no. 1 it reflects that property in question is about 7 marlas and after the death of her husband Manohar Singh, property comes in equal share in favour of the L.Rs. It has also been stated in the cross examination that one son namely Balbir Singh is residing separately and is not residing in the disputed property. Further witness also admitted that one FIR under Section 326 of IPC is got registered by Harbhajan Singh against said Sandeep Singh brother in law of Balbir Singh(respondent no.2) in which he is declared offender/proclaimed offender. The witness also admitted the share of appellant/plaintiff to the tune of 1/5th share. The witness further admitted that appellant/plaintiff used to pay ₹500/- p.m as per order of SDM to their mother i.e. respondent cum defendant no.1 and also stated that another son Balbir Singh has not paid any amount from the last two years. Further, it is pertinent to mention that on the record one copy of the conveyance deed has been brought, which reflects the name of Manohar Lal. Perusal of said Ex.P2 conveyance deed and



alleged site plan Ex.p1 categorically reflects that as per the conveyance deed, on the north side, there is house of Makhan Singh, on south side there is gali, on the east side, there is house of Dewan Singh and on the west property of Manohar Singh. Further site plan Ex. P1 reflects that on the north side there is property of Ram Lubaya, on the south side there is property of Banta Singh, on east side there is property of Sharam Sigh and on the west side there is street. Thus, it reflects that said boundaries of both the documents on which appellant/plaintiff has placed reliance, does not match with each other and even there is no such clarification given by the appellant/plaintiff qua to the said fact that how the said boundaries of the property in question is different.”

8. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. From the above, it is clear that the evidence led by the plaintiff was contradictory. Moreover, it is established on record that the defendants were willing to give the plaintiff 1/5 share of the suit property; and it is the plaintiff who has continued with the present litigation, despite the offer of the defendants.

9. In view of the above, present appeal is **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

08.09.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No