



113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5506-2018 (O&M)
Date of decision : 02.04.2025

Jasdev Singh

...Appellant

Vs.

Charan Singh (Deceased) through LRs
and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the appellant.

Mr. Aayush Gupta, Advocate
Mr. Rishab Garg, Advocate
for respondents No. 3 to 5.

ANIL KSHETARPAL, J. (Oral)

1. Through this Regular Second Appeal, the appellant assails the concurrent findings of fact arrived at by the Courts below while rejecting his plaint.

2. Originally, the appellant had filed a suit for grant of decree of declaration, wherein he prayed for the following reliefs:-

"It is, therefore, prayed that a decree for declaration to the effect that the plaintiff is the owner of 1/3rd share out of properties and agricultural land detailed herein below:-

a) Agricultural land measuring 5 Kanals 5-1/2 Marlas out of area measuring 15 Kanals 17 Marlas out of area measuring 47 Kanals 12 Marlas comprised in Khewat No.161, Khatouni



No.177, 178, 179, Khasra No.80//11/2, 17, 80//7/1, 14, 80//8/2, 8/3, 9/1, 9/2, 12/2, 13, 18/1/1, 19/1/1 as entered in the jamabandi for the year 2005-2006 situated at Village Jandiali, H.B.No.225, Tehsil and District Ludhiana;

b) Residential House bearing H.No.199/2 measuring 192 square yards having the dimensions 58' X 50' X 23 X 41' situated at Jamalpur Awana, H.B.No.177, Tehsil and District Ludhiana situated in Abadi area of New Moti Nagar, District Ludhiana and bounded as under:-

East:- Mandir

West:- Street

North:-Street

South:-House of Dalbara Singh

c) Two residential houses situated at Village Jandiali, Tehsil and District Ludhiana duly shown as red in the accompanying plan and bounded as under:-

East:- Street

West:-Agricultural Land of Neighbourer

North: House of Pal Singh

South: House of Ajit Singh

AND

East:- Neighbourer

West:- Street

North:-Road

South: - Neighbourer

AND

a decree for partition of above said residential properties detailed in (b) and (c) above by metes and bounds;

AND



a decree for rendition of account of income from the agricultural land and rental income from residential properties situated at New Moti Nagar, Ludhiana

AND

both the sale deeds i.e. sale deed dated 03.06.2013 bearing vasika No.782 dated 06.06.2013 in favour of defendants No.3 & 4 and sale deed dated 03.06.2013 bearing vasika No.783 dated 06.06.2013 are also illegal, null, void, ab-initio, without consideration, sham transaction and is a result of collusion between the defendant No.2 and the defendants No.3 to 5 in order to jeopardize and forfeit the rights of the plaintiff and as such are not binding on the rights of the plaintiff

AND

consequential a decree for possession of 1/3rd share in favour of the plaintiff regarding agricultural land, two residential houses;

AND

a decree for grant of perpetual injunction restraining the defendants, their agents, attorneys, successors from alienating the suit properties i.e. agricultural land measuring 5 Kanals 5-1/2 Marlas out of area measuring 15 Kanals 17 Marlas out of area measuring 47 Kanals 12 Marlas comprised in Khewat No.161, Khatouni No.177, 178, 179, Khasra No.80//11/2, 17, 80//7/1, 14, 80//8/2, 8/3, 9/1, 9/2, 12/2, 13, 18/1/1, 19/1/1 as entered in the jamabandi for the year 2005-2006 situated at Village Jandiali, H.B.No.225, Tehsil and District Ludhiana and the three residential properties as detailed in (b) and (c) above in any manner by way of sale, mortgage, gift or to part with possession in favour of any other person except the plaintiff on the basis of writing dated 22.04.2009 and further restraining the defendants from dispossessing the plaintiff from the residential house in his possession illegally and forcibly may kindly be granted/passed in



favour of the plaintiff and against the defendants with costs throughout.

Any other relief to which the plaintiff is found entitled to in addition or in the alternative may also be granted in favour of the plaintiff and against the defendants."

3. Smt. Anil Kaur Gill, Smt. Sukhbir Kaur and Smt. Manpreet Kaur Mann filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, which was allowed. Subsequently, the aforesaid individuals filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 to reject the plaint at the threshold on the ground that the plaintiff has not affixed *ad valorem* Court fee. Smt. Anil Kaur Gill etc. claimed to have purchased the property from defendant No.2, namely, Sh. Devinder Singh.

4. The trial Court directed the plaintiff to pay *ad valorem* Court fee on the relief of possession. Consequently, the plaintiff's plaint was rejected as the plaintiff failed to pay the Court fee. The plaintiff filed first appeal, which was also dismissed.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. Learned counsel representing the appellant submits that in view of the Full Bench judgment in 'Diwan Chand (Plaintiff) vs. Dhani Ram and others', 1941 the PLR 147, the Court fee is not payable because the plaintiff claims the relief of partition of joint property and the plaintiff being co-sharer shall be deemed to be in constructive possession of the property.

7. *Per contra*, learned counsel representing the respondents submits that the plaintiff is not in possession of the property, hence, qua relief of



possession, the Court fee is payable.

8. The issue with regard to liability of the plaintiff to pay *ad valorem* Court fee on the relief of possession with respect to residential property is debatable. There is another Full Bench in '*Asa Ram & others Vs. Jaganath & others*', *AIR 1934 Lahore 563* on the aforesaid issue.

9. Keeping in view the aforesaid facts, it is considered appropriate to set aside the order rejecting the plaint. It shall be open to the defendant to pray to the trial Court for framing a distinct and separate issue on the question of liability to pay Court fee by the plaintiff, which shall be decided alongwith the suit. At that stage, if the plaintiff is found liable to pay the Court fee, a conditional decree can be passed.

10. With these observations, the impugned orders are set aside and the plaint of the plaintiff is restored to its original number.

11. The trial court is requested to proceed with the case.

12. The appeal is allowed.

13. All the pending miscellaneous applications, if any, are also disposed of.

02.04.2025

neeraj

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No