

PBGD020020122017



Presented on : 13-09-2017
Registered on : 14-09-2017
Decided on : 02-08-2023
Duration : 5 years, 10 months, 19 days

**IN THE COURT OF
Civil Judge (Junior Division) AT ,Gurdaspur
Presided Over by Ms. Chandna Bhatti**

CS/1204/2017

1. Ashwani Kumar
2. Rakesh Kumar, both sons of late Sh. Hans Raj son of late Sh. Sant Ram, both residents of VPO Khojpur, Tehsil & District Gurdaspur.

.....Plaintiffs

Versus

1. Kuldeep Raj,
2. Hardeep Raj,
3. Surjit Kumar,
4. Baljit Kumar, all sons of late Sh. Rattan Chand son of late Sh. Sant Raj, all residents of VPO Khojpur, Tehsil & District Gurdaspur.
5. Ram Lal son of late Sh. Sant Ram, now deceased through his Lrs:-
(i) Sarabjit Kumar
(ii) Raj Kumar sons of Ram Lal residents of VPO Sri Hargobindpur, Tehsil Batala District Gurdaspur.

.....Defendants

**Suit for decree of vacant possession of land
underneath the house marked ABCDEF by
way of partition by metes and bounds of
1/3rd share of the plaintiffs after demolition
of the aforesaid house in respect of the area
measuring 50' x 25' approximately which is**

bounded as below:-

North: Haveli of Gurdial Singh

South: Chowk

East: House of Kishori Lal

West: Pucca Road

**Situated in the revenue estate of village
Khojpur, Tehsil & District Gurdaspur as
mentioned in the head note of the plaint and
shown in the site plan.**

Present: Sh. Sherjasjit Singh, Advocate for plaintiffs.
Sh. K.M. Singh, Advocate for defendants No.1 to 4 and Lrs
No.(i) and (ii) of defendant No.5.

JUDGMENT

1. The plaintiffs have filed the present suit against the defendants for seeking relief of vacant possession by way of partition by metes and bounds as detailed and described for in the head note of the plaint.

2. Succinctly, the brief facts of the case of the plaintiffs are that originally, Sant Ram son of Fateh Chand, resident of Village Khojpur, Tehsil & District, Gurdaspur was the owner of one house and haveli situated at village Khojpur, Tehsil & District, Gurdaspur. Said Sant Ram had expired in the year 1954 leaving behind three sons namely Hans Raj, Ram Lal and Rattan Chand. Out of them, Hans Raj had also expired on 17.07.2014 and plaintiffs are the Lrs of said Hans Raj. Similarly, Rattan

Chand had also expired on 28.06.2003 and defendants No. 1 to 4 are the sons of late Sh. Rattan Chand. However, Ram Lal defendant is still alive and is presently living of Shri Hargobindpur, Tehsil Batala District Gurdaspur. It is submitted that prior to the filing of the present suit, a similar suit for partition was filed titled “Ram Lal & Others Vs Hans Raj”, in respect of the house marked ABCD measuring approximately 75 ft x 28 ft owned by Sh. Sant Ram and the said suit was hotly contested by the parties and the same has now been adjudicated between the parties and the said suit was decreed by the Court of Sh. H.S. Dhaliwal, the then Ld. Additional Civil Judge (Sr. Div.), Gurdaspur, vide Judgment and Decree dated 29.10.2001. The father of the plaintiffs filed appeal against the preliminary decree passed by the Court vide Judgment dated 29.10.2001 and said appeal was dismissed. Ram Lal etc. now defendants filed an application for obtaining the final decree after passing the preliminary decree and the final decree was passed by the Court of Sh. Mohit Bansal, Ld. Additional Civil Judge (Sr. Div.), Gurdaspur, vide order dated 15.01.2016. Ashwani Kumar etc. (now plaintiff) filed appeal against the order dated 15.01.2016 passed by the Court of Sh. Mohit Bansal, Ld. Additional Civil Judge (Sr. Div.), Gurdaspur, and said appeal was dismissed by the Court of Sh. Rajnish Garg, Ld. Additional District Judge, Gurdaspur, vide Judgment and Decree dated 17.08.2017. It is further submitted that Ram Lal defendant had appeared as a witness in civil suit title “Ram Lal Vs Hans Raj” decided by the Court of Sh. H.S. Dhaliwal, Ld. Additional Civil Judge (Sr. Div.) Gurdaspur, vide Judgment and Decree dated 29.10.2001 and made statement as PW-2 where Ram Lal has

categorically admitted in his cross-examination that Rattan Chand son of Sant Ram, father of defendants No.1 to 4, had constructed his residential house in the site which was being used as haveli by Sant Ram during his lifetime. This fact goes to prove that defendant No.5 has himself admitted that Sant Ram was having a residential house and haveli situated at village Khojepur during his lifetime. So far as the property of the house of Sant Ram is concerned, that has finally been adjudicated between the parties and now the land of haveli over which Rattan Chand father of defendants No.1 to 4 has constructed his residential house in question, is still joint khata and the same has yet not been partitioned as the same is also the ancestral property of Sant Ram. It is further submitted that Ram Lal defendant and Rattan Chand father of the defendants No.1 to 4 intentionally and willfully did not mentioned the present suit property in their earlier suit knowing fully well that the present suit property was being used as haveli by Sant Ram during his lifetime and as such, after the demise of Sant Ram, all the three sons of Sant Ram were entitled to inherit the same in equal share. Ram Lal and Rattan Chand, who were clever persons, they committed fraud with Hans Raj who was illiterate and simpleton person and got the partition by metes and bound of 2/3rd share of the house of Sant Ram by filing the suit for possession by way of partition despite the fact that the partial partition of the property was not permissible under the law as they have intentionally and willfully failed to include the site of haveli in the said suit owned and possessed by Sant Ram son of Fateh Chand said above. Plaintiffs approached and requested the defendants to admit their claim, but they refused to do so. Hence, the

present suit.

3. Upon notice, defendants No.1 to 4 and Lrs No.(i) and (ii) of defendant No.5 appeared and contested the present suit by filing separate written statements on the similar ground that the suit of the plaintiffs is not maintainable and the plaintiffs are estopped from filing the present suit. On merits, it is submitted that Sant Ram was not the owner of any haveli at village Khojpur Tehsil Gurdaspur. He was owner of one house in the village which has already been ordered to be partitioned by the Civil Courts as per the Judgment and Decree dated 29.10.2001. It is further submitted that the father of the present plaintiffs never pleaded in his written statement filed by him in Civil Suit No.275 of 1998 decided on 29.10.2001 that Sant Ram was owner of one haveli also. So the present suit has been filed by the plaintiffs by concocted versions simply on the basis of alleged bald statement of deceased Ram Lal. Neither plaintiffs nor deceased Ram Lal had any right, title or interest in the house in question. No fraud has ever been committed by the father of the replying defendants as alleged by the plaintiffs. It is further submitted that the plaintiffs have no concern with the house in suit. Earlier the father of the defendants No.1 to 4 construct a katcha kotha in the Sham Lal land of the village in year 1961 where the defendant No.1 took birth in that katcha house. Later on some pucca construction were made in the same. Thereafter, the defendants No.1 to 4 with their own hard earnings constructed the rest pucca portion of the house in suit. The defendants No.1 to 4 are owner in possession of the house in dispute since 1961 and

Sant Ram had no concern with the same during his life time. Denying rest of the allegations, mentioned in the plaint, a prayer is made to dismiss the present suit.

4. From the pleadings of the parties, following issues were framed by the Ld. Predecessor of this Court on dated 05.01.2019:-

- 1. Whether the plaintiffs are entitled for relief of possession as prayed for?OPP
- 2. Whether the suit is not maintainable?OPD
- 3. Whether the plaintiffs are estopped from filing the present suit?OPD
- 4. Whether the suit plaintiffs is bad for non-joinder of necessary parties.?OPD
- 5. Relief.

5. In order to prove their case, plaintiffs have examined following witnesses:-

PW-1	Ashwani Kumar	Plaintiff vide his affidavit Ex.PW1/A has deposed as per his case set out in the plaint, which need not to be reproduced here for the sake of brevity. He has proved on record the documents i.e. certified of copy order dated 15.01.2016 passed by Court of Sh. Mohit Bansal the then, Ld. ACJ SD Gurdaspur, Ex.P1 and final decree Ex.P2, certified copy of Judgment and Decree sheet dated 17.08.2017 Ex.P3, Ex.P4 respectively passed by Court of Sh. Rajnish Gard Ld. ADJ, Gurdaspur and copy of site plan
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		Ex.P5.
PW-2	Davinder Singh	Witness, Ex-Sarpanch of Panchayat, by way of his affidavit Ex.PW2/A has supported and corroborated the case of the plaintiffs.
PW-3	Balkar Masih	Witness, Ex-member Panchayat, by way of his affidavit Ex.PW3/A has supported and corroborated the case of the plaintiffs.
PW-4	Paramjit Singh	Witness, by way of his affidavit Ex.PW4/A has proved the site plan as Ex.P5.

Thereafter, Sh. Sherjasjit Singh, Advocate closed evidence on behalf of plaintiffs, vide his separate statement, on dated 02.12.2022.

6. In order to rebut the case of the plaintiffs, defendants examined following witness:-

DW-1	Kuldeep Raj	Defendant vide his affidavit Ex.DW1/A has deposed as per his case set out in the written statement, which need not to be reproduced here for the sake of brevity.
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Thereafter, Ld. Counsel for defendants tendered into evidence the certified copy of Judgment dated 29.09.1998 Ex.D1, certified copy of decree sheet dated 29.09.1998 Ex.D2, certified copy of statement of Hans Raj Ex.PW2 in civil suit No.135 of 1995 as Ex.D3, certified copy of plaint in case No.135 of 1995 titled as Hans Raj and Others Vs Ram Lal and Others Ex.D4 and closed his evidence on dated 03.05.2023.

7. It is the arguments of Ld. Counsel for the plaintiffs **Sh.**

Sherjasjit Singh, Advocate, that plaintiffs have duly proved on record the fact that originally, Sant Ram was owner of the property in dispute which was being used by him during his life time, as haveli. After the death of Sant Ram, his three sons namely Hans Raj, Rattan Chand and Ram Lal become owners to the extent of equal share. It is being argued that prior to the filing of the present suit, a similar suit for partition titled as “Ram Lal & Others Vs Hans Raj”, in respect of the house Marked ABCD measuring approximately 75ft x 28ft owned by the Sant Ram was filed and the said suit was hotly contested and finally, the house was partitioned between the three sons of the Sant Ram in equal shares. It is further argued that in the said suit, defendant Ram Lal had appeared as PW2 and got recorded his statement to the effect that “Rattan Chand son of Sant Ram, father of the defendant No.1 to 4, had constructed his residential house in the site which was being used as haveli by Sant Ram during his life time”. The said land of haveli is still joint and the same has not been partitioned between the parties. The said haveli is the ancestral property of the Sant Ram and thus, the father of the plaintiffs, father of the defendants No.1 to 4 and father of the Lr No. (I) and (ii) i.e. the defendants No.5 are having equal share in the said haveli. Since, all the averments of the present plaint has been proved on record by plaintiffs, as such, they are entitled to the decree of possession of the suit property by way of partition by metes and bounds, as prayed for.

8. On the other hand, arguments addressed on behalf of plaintiffs were controverted by counsel for the defendants **Sh. K.M. Singh, Advocate**, on the ground that the present suit deserves to be

dismissed being not maintainable. He argued that Sant Ram was not owner of any haveli at village Khojepur. He was owner of one house which has already been ordered to be partitioned vide Judgment and Decree dated 29.10.2021, which has already attained finality. He has argued the property in dispute is not an ancestral property of Sant Ram. Rather, the father of the defendants No.1 to 4 had constructed a Kacha Kotha in the Shamlat land in the year 1961 and later on defendant No.1 to 4 had constructed pacca portion of the house in suit with their own hard earnings. Neither plaintiffs nor deceased defendant No.5 has any right, title or interest in the house in question. Accordingly, he has prayed for dismissal of the present suit with costs.

9. After hearing the submissions made by both the parties, this Court has gone through the pleaded case of the parties, documents available on the file, the legal proposition involved in the present case and the case law referred. After hearing both the sides, this Court has preferred to decide the controversy between the parties while returning findings on each issue one by one. My issue wise findings are as under:-

ISSUE NO.1

10. Onus to prove issue No. 1 was placed on the plaintiffs. After hearing both the sides, this Court is of the considered opinion that as per well settled law, it is the plaintiffs, who have to prove their own case and have to stand on their own legs. Plaintiffs can not take benefit of weakness of the story of defendants.

11. It is the case of the plaintiffs that originally, Sant Ram was owner of the property in dispute which was being used by him during his

life time, as haveli. After the death of Sant Ram, his three sons namely Hans Raj, Rattan Chand and Ram Lal become owners to the extent of equal share. The said land of haveli is still joint and the same has not been partitioned between the parties. The said haveli is the ancestral property of the Sant Ram and after his death, the father of the plaintiffs, father of the defendants No.1 to 4 and father of the Lr No. (i) and (ii) i.e. the defendants No.5 are having equal share in the said haveli, which is yet to be partitioned.

12. In order to prove the fact that plaintiffs are entitled to the relief of possession by way of partition, firstly it is imperative to determine that whether the suit property is being jointly owned by plaintiffs and defendants. In the regard, it was pleaded by the plaintiffs that the property in dispute was ancestral property in the hands of Sant Ram, which was being used by him as haveli, during his life time. After his death, the father of the plaintiffs, father of the defendants No.1 to 4 and deceased defendant No.5 became co-owners to the extent of equal shares. It is pleaded that the property in dispute is still joint between the parties and has not been partitioned yet. However, in the written statement filed by the defendants, it has been pleaded that Rattan Chand, son of Sant Ram, father of the defendants No.1 to 4, had constructed katcha kotha over the property in dispute which is Shamlat land, in the year 1961 and the property in dispute was not the ancestral property of the parties. Neither the plaintiffs nor the deceased defendant No.5 are having right title or interest over the same. No doubt, in order to prove his case, plaintiff **Ashwani Kumar** himself stepped into witness box as **PW1** and

by way of affidavit Ex.PW1/A has reiterated the contents of the plaint, but he has failed to substantiate his allegations during his cross-examination. PW1 Ashwani Kumar, in his cross-examination, has admitted that the property in dispute is Shamlat in nature. He has deposed that during the life time, his father never filed any case for partition of the property in dispute against his brothers. He has also deposed that he has no proof from which it could be infer that the property in dispute was the ownership of his grand father Sant Ram or his father namely Hans Raj. Not only this, PW1, in his cross-examination, has admitted as correct that in the year 1961, his uncle namely Rattan Chand had raised construction over the property in dispute and later on, Rattan Chand had raised pacca construction over it. Further, though, plaintiffs have also examined **Davinder Singh (PW2)** and **Balkar Masih (PW3)**, who have deposed as per the case of the plaintiffs, in their respective affidavits, but perusal of cross-examination of above referred witness reveals that they do not know anything about the property in dispute. Rather, PW2 Davinder Singh has admitted as correct that Rattan Chand was residing in the said katcha room. He deposed that he has not seen the document which shows that Sant Ram was owner of the suit property and he does not know if the suit property in dispute is Shamlat in nature. Further, PW3 Balkar Masih has also deposed that he has not seen the ownership of house in dispute till today.

13. From the appreciation of testimonies, referred above, this Court is of the opinion that the plaintiffs have failed to prove on record the fact that the property in dispute was ancestral property at the hands of

Sant Ram which was being used by him as haveli, during his life time and after his death, the father of the plaintiffs, father of the defendants No.1 to 4 and deceased defendant No.5 became owners to the extent of equal shares. Rather, PW1 Ashwani himself admitted the Shamlat nature of the land in dispute as well as the possession of the Rattan Chand, father of the defendants No.1 to 4 over the same. There is nothing on record to show that Sant Ram was owner in possession of the property in dispute and he was using the same as haveli during his life time. In the absence of any cogent and convincing piece of evidence, the oral assertion of the plaintiffs cannot be looked into.

14. Ld. Counsel for the plaintiffs argued that in the earlier civil suit titled as “Ram Lal & Other Vs Hans Raj”, the deceased Ram Lal (defendant No.5) had appeared as PW2 and admitted in his cross-examination that Rattan Lal is residing in the haveli of Sant Ram and thus, the property in dispute being ownership of Sant Ram, is to be partitioned between his legal heirs and he draws the attention of this Court towards the said statement of Ram Lal (Ex.P6). I have heard and considered the arguments of Ld. Counsel for the plaintiffs, but I do not find any merits in the same. This Court is of the opinion that only on the basis of bald statement of deceased Ram Lal, in the earlier case titled as “Ram Lal & Other Vs Hans Raj”, the property in dispute cannot be presumed as ancestral property of deceased Sant Ram without any corroborative evidence. Rather, the plaintiff Ashwani Kumar himself admitted the case of the defendants. Thus, the arguments as addressed by the Ld. Counsel for the plaintiff are of no consequence.

15. On the basis of this discussion held in the proceeding paras of this Judgment, this Court is of the opinion that the plaintiffs have failed to prove on record that the property in dispute was ancestral property and Sant Ram was owner in possession of the same, thus, they are not entitled for the relief of possession by way of partition as prayed for. Accordingly, issue No.1 is decided against the plaintiffs and in favour of defendants.

ISSUES NO.2

16. Onus to prove this issue was upon the defendants. In **Smt. Gangabai v. Vijay Kumar (1974) 2 SCC 393** Hon'ble Supreme Court held that “.... there is the basic distinction between right of suit and right of appeal. There is inherent right in every person to bring the suit of civil nature and unless one's choice. It is no answer to a suit, howsoever frivolous to claim, that law confers no right enough to sue. A suit for its maintainability requires authority of law and it is enough that no statute bars the suit.....”. Ld. Counsel for the defendants have mentioned no statute by which this suit is not maintainable. Hence, this issue is decided against the defendants and in favour of the plaintiffs.

ISSUE NO.3

17. Onus to prove this issue was upon the defendants. Although, arguments has been advanced, but there is no cogent evidence on account of which act and conduct of the plaintiffs, they are estopped from filing the present suit. So, in the absence of the same issue goes against the defendants and in the favor of the plaintiffs.

ISSUE NO.4

18. Onus to prove this issue was on the defendants. The relevant provision of Code of Civil Procedure is Order 1 Rule 9

Misjoinder and nonjoinder. - No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Provided that nothing in this rule shall apply to non-joinder of a necessary party.

The defendants have not pointed out as to who were the necessary party to the suit. Hence, this issue is decided against the defendants and in favour of the plaintiffs.

(RELIEF)

19. In view of the findings recorded on issues above, the suit of the plaintiffs is ordered to be dismissed with costs. Decree sheet be prepared and file be consigned to the record room, Gurdaspur, after indexation.

Pronounced in open Court.
Dated:02.08.2023
*Usha**

(Chandna Bhatti), PCS,
Civil Judge (Junior Division),
Gurdaspur, UID No.PB0511.

Dictated on :02.08.2023
Transcribed on :02.08.2023
Checked on :02.08.2023
Signed on :02.08.2023

(Chandna Bhatti), PCS,
Civil Judge (Junior Division),
Gurdaspur, UID No.PB0511.