

Reeta Saini vs Rajesh Saini
In the Court of Daleep Kumar, PCS,
Civil Judge (Junior Division), Amritsar.

Civil Suit Filing No.2368/2016
Date of Institution:11-05-2016
CIS No.CS-1139/2016
CNR No.PBAS02-002147-2016
Decided on : 11-04-2018

Reeta Saini daughter of late Shital Singh Saini wife of
Vijay Kumar, resident of House No.528, Gali Kang
Trader, Near Gandhi Chowk, Bahadurpur, Hoshiarpur.

...Plaintiff

Versus

Rajesh Saini son of late Shri Sheetal Singh Saini,
resident of House No.7, Judge Nagar, Post Office Khanna
Nagar, Chali Khuh, Amritsar.

...Defendant

**Suit for Separate possession by way of
partition by metes and bounds &
Permanent Injunction.**

Present: Shri Sanjay Kapoor, Advocate counsel for
plaintiff.
Ms.Roshni Azad, Advocate counsel for
defendant.

JUDGMENT:

This suit has been filed by the plaintiff
against the defendant for separate possession by way
of partition and permanent injunction.

2. Brief facts of the present suit as per plaint
are that the mother of the plaintiff and defendant, had

purchased one plot bearing No.7-B, Khasra No.1858 min, measuring 111 sq.yards, situated at Rakba Tungpai Suburban, Abadi Jujj Nagar, Inside Municipal Corporation, Amritsar, vide registered sale deed dated 26.8.1977 and she constructed a house thereon with her own expenses. Smt.Sudesh Saini, mother of parties, died on 18.1.2001 in a road accident alongwith her husband Shital Singh Saini and she left behind the plaintiff being her daughter and defendant being her only son and only Class I Legal heirs and as such, the plaintiff and defendant are entitled to $\frac{1}{2}$ share each from the estate left by Smt.Sudesh Saini. The plaintiff and defendant are co-owners/co-sharers to the extent of $\frac{1}{2}$ share each in the suit property and other articles belonging to Sudesh Saini. The suit property is joint in nature between the parties to the extent of their respective half share each and the plaintiff wants to divide the same by metes and bounds. The suit property is joint between the co-sharers and has not been partitioned so far. The plaintiff has requested the defendant number of times to partition the suit property by metes and bounds, but defendant is not ready to do so, rather threatened to alienate some specific portion

of suit property and to demolish and damage the suit property and to make additions and alterations and structural changes in the suit property detrimental to the rights of plaintiff, for which he has no right to do so. The plaintiff does not want to keep her share joint with the defendant, as such, the plaintiff has filed the present suit for separate possession of suit property by way of partition by metes and bounds and for permanent injunction.

3. Upon notice of suit, the defendant appeared through counsel and filed written statement by raising preliminary objections that suit is not legally maintainable in the present form; plaintiff has not come to the court with clean hands and has suppressed true facts from the Court; the plaintiff has no cause of action to file the suit; the suit is not within period of limitation; the suit is not properly valued for the purposes of court fee and jurisdiction and that the suit property is the dwelling house and plaintiff has got no right, title or interest in the same. Further on merits, it is submitted that father of the parties namely Sheetal Singh Saini was serving in the police department and the construction of the house was made with the joint

funds of Sheetal Singh Saini and his wife Sudesh Saini and they had constructed the dwelling house for their own residence as well as their family members. It is admitted that both father and mother of parties died in an accident, leaving behind the plaintiff and the defendant being their only daughter and son. It is denied that plaintiff is entitled to $\frac{1}{2}$ share in the estate left by Smt.Sudesh Saini, deceased. Infact, the house in question belonged to Smt.Sudesh Saini, mother of parties and it is the only dwelling house in which she was residing with her family members and after the death of his parents, the defendant is using the said house for his residence and for the residence of his family members being the sole male member in the family of the deceased. The plaintiff cannot claim $\frac{1}{2}$ share in the dwelling house because she does not fall within the definition of Family and she is residing with her husband in her matrimonial house at Hoshiarpur since the year 1988-89. The mother of parties died in the year 2001 and after her death, only the defendant is using the said dwelling house for his residence alongwith his family members consisting of his wife and two children. During the life time of his parents, the

defendant was married with Kamini in the year 1995 and after his marriage, the defendant alongwith his wife and his parents have been residing in the house in question and the plaintiff never used the said house for residence after her marriage. The children of the defendant also born in the said house. After death of mother of the parties in the year 2001, succession of her property was open and even after her death, the defendant alongwith children using the said dwelling house for residence purpose and plaintiff has got no right, title or interest in the same. The defendant spent lacs of rupees to maintain this dwelling house for using it for his family members. The defendant spent money from time to time for renovation of the house from his own pocket. The suit property is not partable at the instance and wish of plaintiff. There is no question of raising any threats by the defendant to the plaintiff. After denying the remaining averments of the plaint, the defendant prayed for dismissal of the suit.

4. Replication was filed, wherein the plaintiff denied the averments of the written statement and reiterated the facts of the plaint.

5. On the basis of pleadings of the parties, the

following issues were framed:

1. Whether the plaintiff is entitled for separate possession by way of partition by metes and bounds of the suit property as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the suit of plaintiff is not legally maintainable?OPD
4. Whether plaintiff has not come to the court with clean hands and has suppressed material facts from notice of Court?OPD
5. Relief.
6. In order to prove her case the plaintiff examined Alok Kumar Kaul, AGM (Legal), BSNL, Ranjit Avenue, Amritsar, as PW1 who proved on record attested copy of death certificate of Smt.Sudesh Saini Ex.P1, attested copy of death certificate of Sheetal Singh Saini Ex.P2, attested copy of relevant page of service book of Smt.Sudesh Saini Ex.P3, attested copy of detail as part of service book Ex.P4, attested copy of loan application Ex.P5, attested copy of sanction Ex.P6, attested copy of abstract of estimate Ex.P7, affidavit Ex.P8, attested copy of sanction order Ex.P9, attested copy of mortgage deed Ex.P10, interest calculation sheet Ex.P11, title page of loan file Ex.P12, attested

copy of sale deed Ex.P13.

The plaintiff further examined PW2 Raja Deepak Singh, AHRC who proved on record certified copy of the sale deed dated 26.8.1977 Ex.PW2/1, its endorsement Ex.PW2/2.

Thereafter, plaintiff Reeta Saini examined herself as PW3 who deposed through her duly sworn affidavit Ex.PW3/A and proved on record certified copy of the sale deed dated 26.8.1977 Ex.PW2/1, original death certificate of Smt.Sudesh Saini Ex.PW3/1, original death certificate of Sheetal Singh Saini Ex.PW3/2, certified copy of the judgment and decree sheet dated 26.8.2009 Ex.PW3/3 and Ex.PW3/4 respectively.

Thereafter, vide separate statement, counsel for plaintiffs closed evidence of plaintiffs.

7. In order to rebut the claim of the plaintiff, the defendant Rajesh Saini examined himself as DW1 who deposed through his duly sworn affidavit Ex.DW1/A.

Thereafter, vide separate statement counsel for defendant closed evidence.

Vide separate statement, counsel for plaintiff closed rebuttal evidence on behalf of plaintiff.

8. I have heard learned counsel for both the parties and have gone through the material on record. My issue-wise findings are as under:-

Issue no.1

9. Onus to prove this issue was upon the plaintiff. It is an admitted fact that both father and mother of the parties to the suit had died in an accident leaving behind the plaintiff and the defendant being their only daughter and son. By filing written statement, the defendant denied that plaintiff is entitled to her share in the estate left by Sudesh Saini, deceased, as the property in question is a dwelling house and plaintiff does not fall within the definition of family and she is residing with her husband in her matrimonial house at Hoshiarpur since the year 1988-1989. Now the question arises here whether the plaintiff is entitled to get half share separated from the defendant and in order to answer this question it is very relevant to mention here that both the parties to the present suit are governed by Hindu Law and accordingly as per Hindu Succession Act both the plaintiff and defendant are entitled to equal share in the suit property as enshrined under Section 15 of the Hindu Succession Act, 1956 which

reads as follows :-

“General rules of succession in the case of female Hindus - (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 -

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.”

Mere contention of the defendant that plaintiff does not fall within the definition of family does not ipso facto disentitle the plaintiff from inheritance of the property left by her deceased mother. Thus, this issue is decided in favour of the plaintiff accordingly.

Issue no.2

11. Onus to prove this issue was upon the plaintiff. In view of discussion made under issue no.1, since the plaintiff is held entitled for separate possession by way of partition by metes and bounds of the suit property as per Section 15 of the Hindu

Succession Act, 1956 and as such, the defendant is hereby restrained from damaging, demolishing, making any construction, addition, alteration in the suit property and further selling the same more than his share. Thus, this issue is decided in favour of the plaintiff accordingly.

Issue no.3

12. Onus to prove this issue was upon the defendant. In view of discussion made under issue no.1 above, the suit of the plaintiff is maintainable and as such, this issue is decided in favour of the plaintiff and against the defendant.

Issue no.4

13. Onus to prove this issue was upon the defendant. However, the defendant has failed to prove as to which material facts have been concealed by the plaintiff and as such, this issue is decided in favour of the plaintiff and against the defendant.

Relief (Issue no.5)

14. In view of my above said findings, a preliminary decree is passed with costs in favour of plaintiff and the plaintiff is held entitled to separate possession of her 1/2 share in the suit property by way

of partition by metes and bounds and the defendant is hereby restrained from damaging, demolishing, making any construction, addition and alteration in the suit property and further selling the same more than his share, except in due course of law. Preliminary decree sheet be prepared and file be consigned to the record room.

Pronounced in open court.

11.4.2018

naveenkumar

Daleep Kumar,PCS
Civil Judge(Jr. Division),
Amritsar. UID No.PB0428