

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1962-1989

Decided on : 28.01.2015

Devi Ram and others

..... Appellants

VERSUS

Bhim Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr.C.P.Tiwana, Advocate, for
Mr.R.S.Chahar, Advocate, for the appellants.

Mr.Harparteek Singh Sandhu, Advocate,
for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellants challenge judgments and decrees dated 17.11.1988 and 02.05.1989, passed by the Sub Judge, IInd Class, Faridabad and the Additional District Judge, Faridabad, respectively, dismissing the suit and the appeal by recording concurrent findings of facts that as the appellants' father Jhumman had already sold his 1/4th share in the land, in dispute, the appellants are not left with any right to claim partition.

Counsel for the appellants submits that sale deed dated 16.09.1955 (Ex.D1), relied by the Courts below to non-suit the appellants, has not been proved by producing attesting witnesses. The boundaries recorded in the sale deed do not tally with the site plan produced by either party. The sale deed Ex.D1, should,

therefore, have been discarded by Courts below and the appellants should have been held to be owners of 1/4th share. Counsel for the appellants states that the following substantial question of law arises for adjudication: -

“Whether admitted variation in boundaries in the sale deed and the site plan required the trial Court to rule out the sale deed from consideration?”

Counsel for the respondent submits that Courts below have recorded concurrent findings of fact affirming the execution and proof of sale deed Ex.D1 and while considering the difference in boundaries recorded in the sale deed and the site plans, have assigned clear and cogent reasons namely the change of boundaries over the period of thirty years. The findings of fact are based upon a considered appraisal of the pleadings and the evidence do not require any interference much less do they give rise to any substantial question of law.

I have heard counsel for the parties and perused the impugned judgments and decrees and the record.

The appellants filed a suit for partition of the land, in dispute, by claiming that the appellants and the defendants were co-owners to the extent of half share each. The defendants/respondents filed a written statement admitting that the appellants' father was a co-sharer to the extent of 1/4th share in the land, in dispute, but as he had sold his share to them, vide registered sale deed dated 16.09.1955 (Ex.D1), the appellants have no subsisting share in the

land, in dispute, or a right to claim partition. After considering the pleadings, the trial Court framed the following issues: -

- “1. Whether the property in suit is joint of the parties? OPP**
- 2. Whether the property as shown in red colour in the site plan was adjudged to be of the father of plaintiff? OPP**
- 3. Whether the suit is malafide? OPD**
- 4. Whether the plaintiffs are estopped from filing the suit from their own act and conduct? OPD**
- 5. Whether the plaintiffs have suppressed true and material facts from the view of the court, if so to what effect? OPD**
- 6. Relief.”**

The trial Court, thereafter, called upon the parties to lead evidence and after appraisal of the pleadings and the evidence, held that the respondents have proved that the appellants' father sold 1/4th share to the respondents, vide registered sale deed dated 16.09.1955 (Ex.D1) and, therefore, have no right to claim partition.

Aggrieved by dismissal of the suit, the appellants filed an appeal, which was dismissed by the Additional District Judge, Faridabad, on 02.05.1989.

Counsel for the appellants has urged that attesting witnesses have not been produced and boundaries recorded in the sale deed and the site plans do not tally, the sale deed should have been discarded. A perusal of the impugned judgments reveals that both the trial Court as well as the first appellate Court have held that the sale deed is a thirty years old document to which a presumption of truth attaches and even otherwise, has been proved by examining the document writer and an attesting witness. As regards the

variation in boundaries, both Courts below have held that after the sale deed was executed in 1955, the boundaries of adjoining lands have undergone a change, for example agricultural land has been converted into plots and houses etc. and, therefore, it would be too much to expect that boundaries set out in the year 1955 would continue to remain the same and tally with the site plan prepared in 1986. The learned Courts below have on the basis of the evidence on record, recorded clear, cogent and plausible findings of fact preceded by a perceptible process of reasoning. The reasoning or the concurrent findings of fact do not suffer from any error of jurisdiction or of law much less have been recorded by misreading any evidence as would enable this Court to hold that any substantial question of law much less the question of law arises for adjudication.

As a consequence, the appeal is dismissed.

28.01.2015

Shamsher S. Sabharwal

[RAJIVE BHALLA]
JUDGE