

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

R.S.A.No.2091 of 2010

Date of Decision: August 21, 2015

Jasbir Singh & another

...Appellants

Versus

Tarlok Singh (deceased) through L.Rs. & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?
- 4.

Present: Mr.Gurmeet Gill, Advocate,
for the appellants.

Mr.Satinder Khanna, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the impugned judgments and decrees passed by both the Courts below, whereby the relief in suit for declaration holding the plaintiff-respondent No.1 to be joint owner of the suit land, i.e., the estate of deceased Kabul Singh and a consequential relief of permanent injunction against defendant No.2 had been declined.

Mr.Gurmeet Gill, learned counsel appearing on behalf of the appellants submits that respondent No.1-plaintiff had not been found in

physical possession of the land or any part of it, though he has been held to be joint owner, therefore, the suit for declaration with alternative prayer of joint possession was not maintainable. Both the Courts below have not appreciated this fact and, thus, committed an illegality and perversity in decreeing the suit and this fact has been noticed by this Court while issuing notice of motion.

Mr.Satinder Khanna, learned counsel appearing on behalf of respondent No.1 submits that the suit was not simpliciter filed for declaration, but a consequential relief of joint possession was sought. The trial Court has passed the decree of joint ownership of the plaintiff and defendant No.1. The Will set up by defendant Nos.2 and 3 in their favour has been disbelieved, thus, both plaintiff and defendant No.1 are co-sharers/co-owners and submits that no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book.

It is a matter of record that respondent No.1-plaintiff had sought declaration as well as consequential relief of joint possession. The relief of joint possession has not been granted, but the plaintiff and defendant No.1 are held to be joint owners. The remedy, if any, for the party was to seek possession through the suit for partition. Defendant Nos.2 and 3 would be at liberty to take any defence in the written statement vis-a-vis the possession.

There is no illegality and perversity in the findings rendered by both the Courts below, particularly once the Will alleged to have been

executed by Kabul Singh in favour of defendant Nos.2 and 3, sons of defendant No.1, has been disbelieved. No substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

August 21, 2015
ramesh

(AMIT RAWAL)
JUDGE