

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.2371 of 2010 (O & M)

Date of Decision: September 24, 2015

Malvinder Singh

..... APPELLANT

VERSUS

Sarwan Kaur & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Rajesh Garg, Advocate, for the appellants.

None for the respondents.

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Jaspal Singh, J

1. Originally, Malvinder Singh – plaintiff preferred a suit for separate possession by way of partition of the property which has been depicted in head note A, B and C of the plaint. That suit was partly decreed on the basis of evidence led by the parties holding that the plaintiff – appellant has been miserably failed to prove that he is joint owner in possession of the property marked A and B, situated in village Sheikhe, Tehsil & District Jalandhar. However, suit for separate possession of property depicted at head note C was decreed to the extent that he is owner to the extent of ½ share in the property in suit and is entitled to preliminary

decree for possession by way of partition vide judgment & decree dated November 13, 2007 passed in Civil Suit No.308 of 2003.

2. Feeling dis-satisfied plaintiff filed an appeal challenging the aforesaid judgment & decree passed by learned trial court and that appeal was dismissed vide judgment & decree dated October 01, 2009 passed by the then Additional District Judge, Jalandhar.

3. Now, the plaintiff has approached this Court by way of instant appeal.

4. It is an undisputed fact between the parties that the property depicted at head note C in the plaint was owned and possessed by Thakur Singh which was got by him in exchange from Basant Singh. A civil suit pertaining to the said property was filed by plaintiff against defendants seeking injunction that he is owner in possession of the said property but that was dismissed vide judgment & decree dated October 15, 2001 by holding that he has failed to prove his possession over the entire property measuring 5 marlas. He preferred an appeal against judgment & decree dated October 15, 2001 but that was also dismissed vide judgment & decree dated May 06, 2002. Similarly, a suit was also filed by defendant Avtar Singh in respect of the same property mentioned at Head Note C in the plaint. That suit was decreed and the defendant was held to be owner in possession to the extent of $\frac{1}{2}$ share in the land measuring 5 marlas. However, so far property mentioned at Head Note A & B is concerned, though the appellant – plaintiff has claimed that the property at Head Note A & B was also the ownership of Thakur Singh and further that he executed a Will in his favour as well as in favour of defendant to the extent of $\frac{1}{2}$ share each but to the utter surprise, no documentary evidence could be brought on record by the appellant –

B was ever owned and possessed by Thakur Singh. So, in this regard, even on the basis of admission of the parties in respect of Will, no decree can be passed by holding that Thakur Singh was owner of the property in dispute. Therefore, the suit for partition in respect of the land mentioned at Head Note A & B was dismissed by the trial court and an appeal challenging the said observation/ findings was also dismissed by the lower appellate court.

5. Even during the course of arguments, learned counsel for the appellant could not point out any document of title showing the ownership of Thakur Singh (since deceased) or execution of the Will by him. So, this Court is of the considered view that findings recorded by the trial court and upheld by the lower appellate court vide judgment & decree dated October 01, 2009 are absolutely in consonance with the evidence available on file and the legal proposition applicable to the facts & circumstances of the case in hand. Thus, there is no question of law, much less, substantial question of law is involved in this appeal, to be dealt with and disposed of by this Court. So, there is no infirmity, illegality and impropriety in the impugned judgments & decrees passed by the courts below.

6. In the light of what has been discussed above, the instant appeal being devoid of merits is dismissed with no order as to costs.

September 24, 2015
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(Jaspal Singh)
Judge