

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

RSA No. 4605 of 2010 (O&M)

Date of Decision: -31.8.2015

Tula Ram and ors

.....Appellants

versus

Krishan Kumar and ors

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARUN PALLI

Present: - Mr. Jai Vir Yadav, Advocate for the appellants.

Mr. Nitin Jain, Advocate for respondent No. 1.

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Arun Palli, J (oral)

Suit filed by the plaintiffs-respondents was dismissed by the learned trial Court vide judgment and decree dated 28.11.2006. Appeal preferred against the said decree was accepted and consequently, the judgment rendered by the learned trial Court dated 28.11.2006 was set aside and the suit was decreed. This is how, defendants-appellants are before this Court in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed a decree for permanent injunction restraining the defendants No. 1 to 49 from raising any construction over the land bearing mustil No. 53 killa No. 14 and 15/1 and using it as a cremation ground, without getting the total land partitioned.

The first Appellate Court on a comprehensive consideration of the matter in issue concluded that no cremation had ever taken place in killa No. 15/1 prior to the cremation of Zile Singh son of Phoap Singh on

27.3.1997. In fact Zile Singh was cremated after the institution of the suit. The jamabandi for the year 1988-89 (Ex. P-1) depicted the suit property as the *Bhud* land and not as a cremation ground. Rather, the evidence on record i.e., Jamabandi for the year 1988-89, showed that another land, comprised in Khasra No. 82, was earmarked for cremation ground. Accordingly, the defendants were restrained from changing the nature of the suit property and using the same as a cremation ground without getting the land partitioned by metes and bounds.

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

Needless to assert, that even if the suit property was a part of a larger joint holding yet its nature and character could not be altered by another co-sharer. No cogent or credible evidence was led to show that suit property was ever used as cremation ground. No doubt, a co-sharer is the owner of every inch of a joint holding and is deemed to be in possession of every parcel, thereof, but still cannot, to the detriment of other co-sharer, alter its very nature and character, by using the same as cremation ground.

Learned counsel for the appellants could not point out as to how the conclusions arrived at by the learned First Appellate Court was either contrary to the position or suffered from any material illegality.

In the wake of the position, as sketched out above, and the conclusions that have concurrently been recorded by both the courts below, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less

any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly, dismissed.

(Arun Palli)
Judge

31.8.2015
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