

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

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RSA No.2801 of 2012(O & M)

Date of Decision:05.10.2015

Raghbir Chand

....appellant

Versus

Mohinder Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Naveen Batra, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 04.10.2011. As even the appeal preferred against the said decree failed, and, was dismissed on 26.03.2012, plaintiff is 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 plaintiff, he prayed for a decree for exclusive possession by way of partition of a land measuring 13 kanals 3 marlas, comprised in different khasra numbers, duly depicted in the plaint. And also for demolishing any construction that was raised over the share of the plaintiff upon a land adjacent to village Gohri.

On a due and comprehensive consideration of the

matter in issue and the evidence on record, both the Courts below, concurrently concluded that the evidence on record showed that although the parties to the lis were in separate possession of specific khasra numbers, but the suit property was still shown to be joint in the revenue record. However, plaintiff himself conceded in his cross examination that besides the suit land, he was also in possession of another property, adjacent to village Gohri, in which he had constructed two pacca lintel houses. Accordingly, it was observed that once the parties also owned and possessed certain other properties that were still joint, a suit for partial partition was not maintainable. Further, plea of the plaintiff himself was that Smt. Banti had since passed away, and her share had devolved upon her sons i.e. defendants No.5 to 7, but the jamabandi for the year 1973-74 (Ex.P4), showed that mutation No.1807 was sanctioned in favour of defendants No.5 to 7, pursuant to a sale deed executed by Preeto Devi and Soma Devi, daughters of Smt.Banti. And mutation No.1807 was qua only the 1/24th share that was owned by them. No explanation was rendered either, as to why daughters of Smt.Banti i.e. Preeto Devi and Soma Devi were not arrayed as a party to the present suit. Though, apparently, they were the proper as also the necessary parties to the lis. That being so, it was concluded that no order of partition could be passed in their absence. Consequently, it was held that though the plaintiff was a co-sharer to the extent of 1/4th share but he could always get his share separated by incorporating all the joint properties without disturbing the possession of other co-sharers to the extent of their shares. Thus, the suit was

held to be not maintainable being for partial partition and for non-joinder of necessary parties.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set out above, 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 in the present appeal. The same being devoid of merit is accordingly, dismissed.

05.10.2015
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(ARUN PALLI)
JUDGE