

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3129 of 2012(O&M)
Date of decision : August 18, 2015

Kaka Singh

..... Appellant

Versus

Pal Singh and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A. D. S. Sukhija, Advocate
for the appellant.

Mr. H.N.S. Gill, Advocate
for respondent No.1.

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?

Amit Rawal, J (oral).

The challenge in the present appeal is to the judgments and decrees of both the courts below whereby the suit of the respondent-plaintiff for separate possession of 3/52 share out of the property comprising Khasra No. 26/30, 57/83 to 239/10 (6B-2B) Gair Mumkin Makant and ½ share of the plaintiff out of property situated at village Saini Majra H.B. No. 271 Tehsil SAS Nagar, Mohali has been decreed and the appeal filed against the same has been dismissed.

Mr. A. D. S. Sukhija, learned counsel for the

appellant-defendant submits that both the courts have non-suited the defendant on the ground that no evidence has been lead contrary to the evidence lead by the plaintiff whereby the property has been shown in the joint ownership. There was no occasion for the defendants to lead evidence, whereas, the plaintiff unequivocally have admitted in the cross examination their separate possession as way back as in the year 1989, therefore both the courts below have misconstrued the oral evidence and thus, the finding rendered by the courts below is capricious and perverse. Thus, the present appeal involve a substantial question of law to be adjudicated by this Court.

Mr. H.N.S. Gill, learned counsel for the respondent-plaintiff submits that the revenue record, which prevails over the oral testimony, shows that the property was in joint ownership therefore, there is no illegality and perversity in the impugned judgment and decree and same are liable to be sustained and no interference is warranted.

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

Admittedly both the parties are real brothers. Father had died and the property devolved upon them in two equal shares, as deceased father died intestate. Both the brothers are entitled to $\frac{1}{2}$ share. No doubt respondents-plaintiffs have admitted that they are in exclusive and separate possession of joint khasra number that would not entail to partition as the documentary evidence brought on record is actually contrary to the stand taken by them. No evidence either oral or documentary has been proved on record by the appellant-

defendant to belie the revenue record.

In my view, no substantial question of law arises for determination. Since the plaintiff has admitted that the parties are in their exclusive possession since long, the court while entertaining the application for preparation of final decree shall take into consideration the admission of the appellant-defendant.

There is no merit in the appeal.

With the aforementioned observations, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 18 , 2015
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