

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1966 of 2013 (O&M)
Date of Decision.12.08.2015

Mohinder KumarAppellant
Versus
Bhawana Kumari and othersRespondents

Present: Dr. Anand Kumar Bishnoi, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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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K. KANNAN J. (ORAL)

1. Delay of 41 days in refiling the appeal is condoned.
2. The plaintiff's suit for partition in possession was rested on plea that the property belonged to the grand mother and it has to be partitioned and she must be given an equal share as that of the defendants. The plaintiff was daughter of pre-deceased son and son of one Sarbati who was admittedly the owner of the property. The contesting defendants were Sarbati's sons and daughters. The defendant set up a plea of oral partition already and that the plaintiff's father had given up the property in lieu of larger share of agricultural land which was allotted to him. This aspect brought out in the reply was joined issue by the plaintiff and according to the defendant, there was no particular denial of the allotment of larger extent of property of agricultural land to the father. It was further contention of the defendant that Sarbati died in the year 1994 and during the time when plaintiff's father was still alive, he did not raise any objection or demand any partition only because he

was aware of the oral family arrangement that had been made where he had forfeited his right to a share in the house and he was rest contended with taking a larger share in the agricultural land. The plaintiff filed the suit through her maternal grand father gave evidence only about the fact that the property belonged to the grand mother and she was entitled to the share. According to the appellant's counsel, the trial Court did not give any finding regarding the oral partition and before the Appellate Court it had not been properly considered.

3. The oral partition, if it was true, must have been certain with reference to every particular, namely, manner of allotment of each item of property and how the owelties were set to equalize the plaintiff's father's share in giving up his right in a residential house and taking larger extent in agricultural land. If the details of the partition had not been properly set forth in the evidence and could not, therefore, obtain credible value for acceptance by the trial Court, I find that to be not capable of being reopened in the second appeal at the instance of the defendant. The issue of whether there had been valid partition between the parties where the plaintiff's father had given up his right is purely a question of fact which must be proved with appropriate evidence. If that evidence was not available and when the defendant has failed in Appellate Court, I find no justification for reversal in the second appeal.

3. There is no substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 12, 2015
Pankaj*