

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

RSA No.2240 of 2013 (O&M)
Date of Decision: 27.01.2015

GopalAppellant

Vs.

Sher Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

Present:- Mr.Surinder Dagar, Advocate for the appellant.

MAHAVIR S. CHAUHAN, J. (ORAL)

Gopal, defendant No.3 before Additional Civil Judge (Sr.Divn.), Ferozepur Jhirka (for short 'trial Court') and appellant before the learned Additional District Judge, Nuh (for short 'First Appellate Court') (appellant herein) has brought this regular second appeal to challenge judgment/decreed dated 28.01.2013 whereby learned First Appellate Court has upheld judgment/decreed dated 07.05.2012 of the learned trial Court decreeing suit for possession by way of partition of the suit property, brought by Sher Singh, respondent No.1 herein.

I have heard learned counsel for the appellant. It is argued by the learned counsel that findings recorded by the courts below are unsustainable because both the Courts have refused to rely upon Exhibit DW4/A which is a family partition that took place amongst the parties in the year 1998 and by virtue of which the parties are in possession of their respective shares.

A perusal of the impugned judgment would reveal that first respondent had approached the trial Court for partition of the suit property by alleging that it was joint amongst the parties and has not been partitioned. In the written statement filed by the

appellant, a family partition Exhibit DW4/A was pleaded and it was stated that by way of this family partition parties were put in possession of their respective shares. Issues were framed. Evidence was taken. Parties were heard. The learned trial Court did not agree with the contentions raised on behalf of appellant and found the suit of the first respondent to be meritorious and, accordingly, decreed it vide judgment and decree dated 07.05.2012. Appellant failed in appeal also as his appeal (Civil Appeal No.21/2012) was dismissed vide judgment/decreed dated 28.01.2013 by the First Appellate Court.

A perusal of the findings recorded by the learned first Appellate Court would reveal and it is not disputed on behalf of appellant that the document Exhibit DW4/A is not a family partition and instead is a gift deed which is compulsorily registrable but is not registered. Therefore, it has rightly been rejected by the learned Courts below.

No other point has been raised.

In view of the above, coupled with the fact that this appeal is not shown to involve any question of law, much less a substantial question of law, I regret my disinclination to interfere with the concurrent and pure findings of fact recorded by the Courts below.

Dismissed.

No costs.

(MAHAVIR S. CHAUHAN)
JUDGE

27.01.2015
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