

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

RSA No.2521 of 2013 (O&M)
Date of Decision.07.09.2015

Hukam Singh

.....Appellant

Versus

Jasmer Singh and others

.....Respondents

Present: Mr. Rajesh Bansal, 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. The plaintiff's suit for injunction was dismissed at the trial Court, faced a decree of confirmation at the Appellate Court.

2. The plaintiff and the defendants are brothers. The suit was resisted by the defendants on plea that the partition had been effected about 20 to 22 years prior to the suit and all of them are living separately. It was also brought in evidence as a matter of admission by the plaintiff himself that all the brothers had installed their separate tubewells and also started cultivating their lands separately. The plaintiff was also reported to have admitted that he had raised construction of room around tubewell, cattle shed and corridor in his own land and the length of corridor is 100 feet. The dimensions of the tubewell room are 14x22x24 feet. The plaintiff stated in his evidence that he used to keep his agriculture implements in the said room and he used to store his agriculture produce in the constructed portion. The

construction was raised by him about four years ago. He had also admitted that a poultry farm of the defendants is in existence over their property and also admitted that other brothers have also raised the construction of tubewell rooms. The Court found that although the jamabandi and girdawaries had still been joint, there was clear admission by the plaintiff himself referring to separate possession of the property and therefore, construction which the defendants were raising in their property held by them cannot be restrained. This finding by a fact of partition as having been taken already was essentially a question of fact brought on the admission of the plaintiff and this judgment was affirmed in appeal.

3. Learned counsel appearing on behalf of the appellant states that a petition for partition has been filed before the Revenue Authorities and the same is pending before it. The counsel would refer to me decision of this Court in *Mohinder Singh and another Vs. Devi Lal and others 2013(2) CCC 618* to contend that where proceedings for partition are pending before the Revenue Authority, the Court will not treat them as having partitioned the property and will grant an injunction against modification of the status quo. This judgment will apply in a case where there is no proof regarding partition. In this case, the trial Court and the Appellate Court have concurrently held that there has been a partition and it was brought through admission of the plaintiff himself. The counsel also argues that the defendants filed a suit for injunction with reference to some other land as though they continued in joint possession of property. I asked the counsel whether there has been a reference to the particular suit which the defendants

were said to have instituted where they claimed joint possession with reference to some other land. The counsel says that there was no such reference in the pleadings or at the trial Court.

4. I cannot allow for any argument to be made on a joint possession which was never brought before the Courts below. I decline to make any interference with the judgments passed by the Courts below. The second appeal is dismissed as involving no substantial question of law for consideration. The partition proceedings before Revenue Authorities will abide by nature of partition as spoken to by parties with reference to specific portions and make fresh allotments only if they are found to be joint.

(K. KANNAN)
JUDGE

September 07, 2015
Pankaj*