IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.3738 of 2013 (O&M)
Date of decision: 03.09.2015

Sukhbir and another ... Appellants

versus

Rajinder Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikram Singh, Advocate,
for the appellants.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.*(Oral)*

1. In a suit for partition brought at the instance of a co-owner claiming that the property was kept in common, the defence was that there had been an oral partition amongst the members and each one of them had put up constructions and living there. The court found that the partition had not been established and the revenue entries also stood jointly and granted a preliminary decree for partition. The appellate court confirmed the same. The defendants, who are aggrieved, are in appeal to contend that there are specific portions of properties in the respective enjoyment of parties and the defendants had purchased the shares of all other

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persons except the plaintiff and the plaintiff is actually in possession of the property that conforms to his share.

2. In my view, if the courts below had taken a view that the plea of oral partition had not been established but it was borne out in evidence the possession of parties in various portions, the appellants cannot still be aggrieved, for, it is possible at the stage of final decree proceedings that the defendants plead for actual measurement and allotment of property held by them in their possession, if they conform to the shares which the defendants are entitled to. In a partition action, every party is in position of the plaintiff and it shall be possible to predicate the specific item of property in possession in such a way that no one person enjoys more than his entitlement. Going by the assertion of the appellants that they are in possession of only the property fallen within their share, I would find no scope for intervention but reserve a liberty to the appellants the right of equitable allotment of the property held by them already in the final decree proceedings in the manner referred to above but if held in possession more than the share, the same may be ordered to be removed.

3. Second appeal is disposed of with the above observations.

(K.KANNAN)
JUDGE

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