

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.1152 of 2015 (O & M)

Date of Decision: *December 14, 2015*

Om Parkash & another

..... APPELLANTS

VERSUS

Kelo Devi & others

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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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PRESENT: - Mr. C.P. Tiwana, Advocate, for the appellants.

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Jaspal Singh, J

CM No.3320-C of 2015

For reasons mentioned in the application, delay of 30 days in filing the appeal is condoned.

Application is allowed.

RSA No.1152 of 2015

1. Learned counsel for the appellants has assailed judgment & decree dated April 23, 2012 passed by the trial court as well as judgment & decree dated August 7, 2014 passed by the lower appellate court whereby

the judgment/decreed passed by the trial court, vide which suit for possession by way of partition has been decreed alleging that the same are based upon conjectures and surmises and are result of misappreciation of evidence available on file.

2. Learned counsel for the appellants – defendants has contended that infact, Krishan, predecessor-in-interest of respondents – plaintiffs used to remain ill. Thus, during his life time, about two decades ago, he got the agricultural land as well as residential and Corral (Bara in question) partitioned. In the said oral family partition/ settlement, property in question i.e. Corral fell to the share of appellants – defendants, whereas the property which was located in the red line of the village came to the share of processor-in-interest of respondents – plaintiffs. While referring to the deposition of one of the plaintiffs namely Kelo Devi, it has been submitted by learned counsel for the appellants that she has admitted the factum of partition which had taken place in between the parties. However, it has been illegally alleged by her that Bara was not partitioned and was kept joint at the time of family partition/settlement.

3. Learned counsel for the appellants has further submitted that even the suit for partial partition is not maintainable as provided under Section 113 & 117 of the Punjab Land Revenue Act, 1887. Moreover, when the factum of partition as admitted or proved, presumption which can only be drawn is that all the properties were divided and a person alleging that family property in exclusive possession of one of the members of the partition is joint and is liable to be partitioned, has to prove his case. But in the case in hand, there is nothing on record to suggest that the property in question was left joint or that it is the only joint property of the parties.

4. While concluding his arguments, it has been submitted by learned counsel for the appellants that since suit for possession by way of partition is not maintainable in respect of the property in question and presumption is also there that once properties have been partitioned, then nothing remains joint. Thus, impugned judgments and decrees are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of the instant appeal.

5. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellants but find the same to be without any legal and factual substance.

6. It is well established that admission is the best proof and if a fact has been admitted by one of the parties, no further evidence is required to establish the same. In the case in hand, one of the defendants, Om Parkash has appeared in the witness box as DW-2 and he has categorically admitted the entire case set up by the respondents – plaintiffs. He has admitted in clear terms that the suit land is joint and the plaintiffs have their share in it. It has further been admitted by him that all the properties except the suit land have already been partitioned more than 20 years ago. In such a situation, even the partial partition is permissible if at the time of any previous partition, one of the properties has been kept joint by its co-sharers. To the similar effect is the deposition of Hari Singh (DW-3). Thus, in view of the admission suffered by the defendants during positions, preliminary decree for partition passed by learned trial court and affirmed by lower appellate court does not call for any interference by this Court.

7. No other issue was urged by learned counsel for the appellant during the course of arguments.

8. In the light of what has been discussed, this court is of the considered view that there is no merit in the instant appeal. As such, the same is dismissed with no order as to costs.

December 14, 2015
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(Jaspal Singh)
Judge