

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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*C.M. Nos. 243-C & 244-C of 2013 &
RSA No. 87 of 2013*

Date of decision: 17.11.2015

Ishwar and another

....APPELLANTS

VERSUS

Prem Parkash and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sandeep Kumar Yadav, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 243-C of 2013

Prayer in this application is for exemption from filing the certified copy of the judgment and decree dated 10.06.2010 passed by the trial Court.

Prayer granted. Filing of certified copy of the judgment and decree dated 10.06.2010 passed by the trial Court is dispensed with.

Application stands disposed of.

RSA No. 87 of 2013

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Rewari dated 10.06.2010, by which the suit for possession by way of partition filed by the respondents-plaintiffs

No. 1 to 12 against defendants No. 3 and 23, who have filed the present appeal, apart from the other defendants, who have been impleaded as proforma respondents i.e. respondents No. 13 to 50, stands decreed on the ground that the plaintiffs have been able to establish themselves to be the co-sharers of the property whereas the appellants-defendants have failed to prove otherwise as was the stand taken by them. The appeal preferred against the said judgment and decree has been dismissed by the Additional District Judge, Rewari on 31.07.2012.

2. It is the contention of the learned counsel for the appellants that the Courts below have not properly appreciated the evidence, which has been led by the appellants-defendants, on the basis of which, it was asserted that the respondents-plaintiffs were not the owners of the property and thus, cannot be the co-sharers. He contends that the suit, as has been preferred by the respondents, would not be maintainable on the ground that they are not in possession of the property and in the absence of possession, no plea for partition of the property could have been entertained. He, thus, contends that the impugned judgments and decree of the Courts below deserve to be set aside and the suit of the respondents-plaintiff dismissed.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments but am afraid that the said contentions cannot be accepted as the Courts below have, in detail, gone into the evidence, which has been led by the parties and on proper appreciation thereof have returned the concurrent finding that the respondents-plaintiffs have established themselves to be the co-sharers of the property of their successors, who are common ancestors along with the appellants-defendants. The findings, as recorded by the

Courts below, thus, do not call for any interference.

4. As regards the contention of the learned counsel for the appellants that the suit would not be maintainable as the respondents are not in possession of the property, suffice it to say that once it is established that they are the co-sharers of the property, the possession on each part of the property is of all the co-sharers and, therefore, this contention of the learned counsel for the appellants cannot be accepted.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 244-C of 2013

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 17, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE