

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 2664 of 2015 (O&M)

Date of decision: 30.09.2015

Chottu

...APPELLANT

VS.

Rattan Singh and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok K. Sharma Bhana, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Mohindergarh dated 10.12.2010, vide which the suit for possession by way of partition preferred by the appellant-plaintiff stands dismissed and the appeal preferred by him has been dismissed by the Additional District Judge, Narnaul on 24.12.2014.

It is the contention of the learned counsel for the appellant-plaintiff that the predecessors-in-interest of the plaintiff and the defendants being common and the property in question being in joint possession, as they were co-sharers as is reflected in the Jamabandi for the year 1996-97, the appellant-plaintiff was entitled to be declared owner of 1/3rd share in the said property as there was no partition of the land. He contends that the

Courts below have wrongly proceeded on the assumption that there has

been partition of the land and the share holders were in possession of the respective shares after partition rather the respondents-defendants are depriving the appellant of the land, which is better placed.

I have considered the submissions made by the counsel for the appellant and have gone through the impugned judgments with his able assistance.

The stand of the respondents-defendants is that there is an oral partition, which has taken place prior to the consolidation proceedings and after the consolidation proceedings, each co-sharer is in his respective share of land, on which they have raised construction and are residing there. Ample evidence has been led by the respondents-defendants to demonstrate the same. The appellant-plaintiff has himself admitted in his cross-examination that all the co-sharers are residing separately for the last 40-50 years since the time of his father. The construction of their own houses by all the co-sharers has also been admitted as also that he sold land out of his share and also transferred 1 Kanal 2 Marlas of land to other person. He further admitted that his son sold his share to one Sh. Chander Bhan and also that the transfer of land by him and his son had taken place to other person, which fact has been concealed by him in the plaint and not disputed in his examination-in-chief. In the written statement, which has been filed by the respondents-defendants, specific plot numbers have been mentioned, which were allotted to all the co-sharers, which has not been specifically disputed by the appellant-plaintiff nor has he disputed the factum of the construction having been raised on their respective plots by all the co-sharers.

There is overwhelming evidence, which has been placed on

record, on the basis of which, the finding has been recorded that the land stood partitioned.

A contention has been raised by the counsel for the appellant that the oral partition has not been reflected in the revenue record as is apparent from the jamabandi for the year 1996-97 and, therefore, the oral partition cannot be said to have been effected between the parties.

This contention of the counsel for the appellant cannot be accepted as held above that there is overwhelming evidence proving an oral partition to have taken place, which has been acted upon by the co-sharers and thus, merely because the same is not depicted in the revenue entries would not obliterate the factum of a partition actually having been effected between the parties. This contention, therefore, stands rejected.

There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be just and reasonable, 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.

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

September 30, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE