

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 371 of 2015(O&M)
Date of decision : January 30, 2015

Puran Singh through his L.Rs Kushal Rani and others
..... Appellant s

Versus

Som Nath and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Randhir Singh Badhran, Advocate
for the appellants.**

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?

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellant-plaintiff is directed against the judgment and decree of the lower appellate court dated 8.12.2014 whereby the judgment and decree of the trial court dated 4.6.2012 vide which the suit of the appellant-plaintiff for partition of the property had been decreed, however appeal filed by respondents-defendants had been set aside vide judgment dated 8.12.2014 by the lower appellate court.

Learned counsel appearing on behalf of the appellant-plaintiff in support of his grounds of appeal submits that the lower appellate court below has committed illegality and perversity in misreading the oral and documentary evidence on record and has

rendered a finding on the basis of assumption and conjectures. The lower appellate court has not referred the case law cited in support of the submission and therefore the finding rendered by the lower appellate court is erroneous.

I am afraid that the aforementioned argument of the learned counsel for the appellant-plaintiff is devoid of merits for the reasons that on perusal of the cross examination of the appellant-plaintiff it is revealed that the site plan Ex.P-1 was prepared on his dictation to the draftsman who prepared without visiting the site. No document except the site plan has been brought on record to show jointness of the property situated in abadi deh. It is an admitted case of the parties that the agricultural land had already been partitioned long time back. Thus there is presumption of partition in respect of land situated in abadi deh also. It cannot be believed that once the parties have partitioned the agricultural land there was no partition of the land situated in residential area i.e. situated in abadi deh. The father of the appellant died in the year 1935 whereas father of the respondent-defendant died way back in 1947. It is a matter of record that there is no revenue record in respect of the property situated in abadi deh. In order to prove the jointness of the property owned by Nihal Singh the onus was on the appellant-plaintiff to show that the property was jointly owned by the appellant-plaintiff and respondent-defendant. No effort has been made even to measure the property. The solitary statement in the cross examination of the one of the defendants would not prove the case of the plaintiff that there was no partition.

It is a settled law that the appellant-plaintiff in order to prove his case has to stand on his own legs and not on the weak wicket of the respondent-defendant.

The lower appellate court after noticing the evidence lead by way of additional evidence has given a categorical finding that the appellant-plaintiff has included the land of Gulab Singh in the site plan to be his joint property which is stated to have been purchased from Parsa. It also came in cross examination of appellant-plaintiff that he has sold the land to Sultan Singh though, in the cross examination he tried to build up the case that the land belong to Nasib Singh which was allegedly purchased through writing and that writing has not seen the light of the day.

No fault can be found with the finding rendered by the lower appellate court in setting aside the judgment and decree of the trial court. I do not find any illegality or perversity in the aforementioned judgments and decrees of the lower appellate court.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 30 , 2015
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