

127.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.4028 of 2015 (O&M)

Date of decision: 22.12.2015

Bimal Kumar @ Pabbi

... Appellant

versus

Mohan Lal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Raman Mohinder Sharma, Advocate,
for the appellant.

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 by the plaintiff against his brother, he was contending that on father's death, the property must be divided equally amongst them. The property was stated to have been jointly purchased by the father along with his brother. The partition action was in respect of the share alleged to have been partitioned and held by the father for his share. The two courts below have granted the decree.

2. The learned counsel argues that there was no proof that the father and his brother had divided the property and there was also no issue framed for an adjudication of whether there had been a

partition between the father and his brother. I do not think this issue is even relevant, for, the plaintiff is claiming for the property held by the father and his own right is confined to the right which the father had under the purchase. He should have the benefit of decree of the share which the father had and it will be irrelevant to detain the case for consideration whether there existed the partition or not between the father and his brother. The plaintiff takes a risk of securing the decree which the father had and if he is unable to prove of partition between his father and brother, it could be objected only by the father's brother and the person claiming under him and not by the plaintiff's own brother.

3. There is no substantial question for consideration in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

22.12.2015
sanjeev