

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

RSA No.6072 of 2015 (O&M)

Date of decision:11.12. 2015

Mahant Lal Dass

-Appellant

Versus

Paramjit Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Hira, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below in a suit for possession by way of partition of 1/5th share of the plaintiff by metes and bounds.

[2] Trial Court decreed the suit on the basis of admission recorded by the defendants to the extent of admitting jointness of properties shown by Annexure/Clause A and B. Respondents admitted the ownership of the father over the properties mentioned in Clause A and B but at the same time denied that the property mentioned in Clause-C was inherited by the parties from their father. Courts below recorded findings of fact that

there is no documentary evidence on record adduced by the plaintiff to show that the property mentioned in Clause-C was inherited by the parties from their father. Plaintiff has to stand on his own legs. Plaintiff cannot take any benefit of weakness in the defendant's case.

[3]. Learned counsel for the appellant relies upon the observations made by the Lower Appellate Court in para No.9 to say that the cross examination conducted on the plaintiff has been misread to the extent of extracting solitary meaning from the first part whereas if the cross examination as a whole is read in conjunction with aforesaid alleged admission, the factum of Sat Parkash being owner stands refuted.

[4]. I have considered the submissions made by the learned counsel for appellant.

[5]. Even if the aforesaid part of cross examination is ignored from the consideration of the appeal, the position is that there is no material on record at the instance of the plaintiff to connect that the property mentioned in Clause-C was inherited by the parties from their father. The concession given by the respondents in respect of properties mentioned in Clause-A and B would not suffice to include the property mentioned in Clause-C in the same pattern particularly when the defendants have specifically denied the aforesaid fact. Even onus of issue No.1 was on the plaintiff. In discharge of said onus, plaintiff has not

adduced any evidence. It is only the respondents who came forward to give concession in respect of properties mentioned in Clause-A and B. In respect of property mentioned in Clause-C, there is no such admission, therefore, plaintiff has to stand by way of leading any cogent evidence on record to show connectivity of land mentioned in Clause-C with his father.

[6]. In the absence of any such inheritance of the property mentioned in Clause-C, in considered opinion of this Court, suit for possession by way of partition qua that share has been rightly rejected by the Courts below. No law point worth consideration is involved. Question No.1 does not arise at all. There is no material on record to suggest that the ownership was of Kartar Dass on the property marked as Annexure/Clause-C. The admission qua property Annexure/Clause-A and B would not suffice to include the property in Clause-C by any stretch of imagination. There is specific denial by the defendants in respect of such inclusion, therefore, plaintiff was required to lead evidence. In the absence of any such evidence, this issue has to be answered in negative. Question No.2 is vague inasmuch as that by way of presumption, property shown under Clause-C cannot be presumed to have been inherited by the parties from their father. Even, if, the alleged writing dated 11.05.1991 is considered, the same stands negated in view of want of proof of execution. In

view of aforesaid, question No.3 would also end in the findings recorded under question No.2. No such question arises for consideration merely because a writing dated 11.05.1991 has been alleged. The said document has not been proved in accordance with law. Question No.4 is also equally discrepant inasmuch as that onus of issue No.1 was on the plaintiff and he has not discharged the burden.

[7]. In view of aforesaid, no question arises worth consideration by this Court. The findings recorded by the Courts below cannot be treated to be the result of misreading of evidence and having suffered with any perversity. Accordingly, the present appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 11, 2015

prince