

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 4575 of 2014 (O&M)
Date of decision: 4.5.2015

Sukhpal Singh

.. Appellant

v.

Surinder Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Baljinder Singh, Advocate for the appellant.

...

Rajesh Bindal J.

One of the defendants is before this court impugning the judgments and decrees of both the courts below, whereby the suit for partition filed by respondent No. 1-plaintiff was decreed. A preliminary decree was passed determining the shares of the parties in joint khewat.

Learned counsel for the appellant submitted that he had purchased part of the land in joint khewat and possession of specific portion of the land was given by the vendor, on which he was raising construction when the suit in question was filed. It was further claimed that there was oral partition between the co-sharers and all the parties were in possession of specific portion coming to their shares, hence, respondent No. 1-plaintiff did not have any cause of action to file the suit and disturb the settled possession of co-sharers. The property was purchased by the appellant with specific boundaries. No objection was raised by any of the co-sharers when foundations for construction of the house were filled. The suit was filed thereafter. The judgments and decrees of both the courts below deserve to be set aside.

After hearing learned counsel for the appellant, I do not find any reason to interfere with the impugned judgments and decrees. The suit was filed by respondent No. 1-plaintiff claiming that the appellant was trying to raise construction on area more than his share. When he refused to stop, the suit had to be filed for partition, as the land was still joint. Prayer was also made for a direction to the appellant to remove the excess construction. The property being joint is not in dispute. The suit was filed for partition. Though a plea was sought to be raised by the appellant that there was oral partition between the co-sharers, however, nothing was produced on record to establish the same. The revenue record clearly established that the property was still joint. Even the persons, who sold the property to the appellant, were not produced in support of his claim that the property had been partitioned. Though some other oral evidence was led, but the same was not sufficient to hold that the property had been partitioned.

In the light of the aforesaid material on record, the findings recorded by both the courts below cannot be said to be perverse. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed. Consequently, the accompanying application is also dismissed.

(Rajesh Bindal)
Judge

4.5.2015
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