

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 07.01.2016

RSA No.1637 of 1997

Harnam Singh & others

...Appellants

Versus

Gurdev Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr. Gautam Dutt, Advocate, for the appellants.

Mr. Amarjit Markan, Advocate, for respondent Nos.1 & 2.

HEMANT GUPTA, J. (ORAL)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for declaration claiming that the plaintiffs are owner to the extent of 15/75th share was not entertained for the reason that the question of title is pending before this Court in second appeal.

The Assistant Collector Ist Grade vide order dated 23.12.1991 declined the partition application of the plaintiffs for the reason that the dispute is pending before this Court. The Collector affirmed the said order of the Assistant Collector Ist Grade on 09.04.1992. It is, thereafter, the plaintiffs filed the civil suit for declaration, which was decreed by the trial Court vide judgment and decree dated 18.05.1996 holding that the plaintiffs are entitled to get the suit property partitioned. Such order of the trial Court stands affirmed by the learned first Appellate Court vide judgment and decree dated 04.01.1997.

The suit, which was referred to by the Assistant Collector Ist Grade to return a finding that the question of title is pending, has since been

decided vide judgment dated 21.11.2006 rendered in RSA No.3021 of 1979 titled 'Bhagwan Singh (died) through LRs & others Vs. Gurdev Singh & another'. This Court has returned a finding that the plaintiffs in that suit, who are also the plaintiffs in the present appeal, could not prove that the land was joint, as the plaintiffs were found to be in exclusive possession of land comprising in khasra No.2908/1 situated in Village Chaunda.

Since the question of title stands decided vide judgment dated 21.11.2006, the sole basis of the order passed by the Assistant Collector Ist Grade and the Collector are knocked down.

In the present second appeal, neither any substantial question of law is framed nor arises for consideration. The claim of the plaintiffs for partition shall now be decided by the Assistant Collector Ist Grade in the light of the findings recorded by the learned first Appellate Court vide judgment and decree dated 04.01.1997 as well as the order passed by this Court on 21.11.2006 in RSA No.3021 of 1979.

Consequently, the present appeal is disposed of.

(HEMANT GUPTA)
JUDGE

07.01.2016
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