

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

RSA No.3511 of 2007 (O&M)

Date of decision:12.04.2016

Gurmeet Singh and another ... Appellants

Vs.

Jagdish Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. J.S. Brar, Advocate, for the appellants.

None for the respondents.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of judgment and decree dated 19.05.2007 rendered by the Lower Appellate Court, whereby, suit seeking declaration and possession in respect of the land measuring 27 kanals 12 marlas being ½ share of 55 kanals 4 marlas, has been decreed, in essence, the judgment and decree of the trial Court, has been reversed.

Mr. J.S.Brar, learned counsel appearing on behalf of the appellant-defendants submits that suit challenging the partition order dated 13.11.1987 was filed on 15.6.1994 on the premise that plaintiffs were minors at the time of the partition and their parentage

was incorrectly mentioned. The trial Court on the basis of the evidence dismissed the suit holding that no evidence came on record vis-a-vis their status being minors and by taking into consideration the other fact that father, who, was arrayed as respondent No.14 in the partition proceedings, appeared and contested the partition proceedings upto the level of this Hon'ble Court. It is basically proxy litigation at the instance of the father, who, had allegedly lost it. The respondent-plaintiffs miserably failed to discharge the onus as they have to stand on their own legs and not to rely upon the weak wicket of some alleged admission in the cross examination, thus, urges this Court to formulate the following substantial questions of law which read thus:-

“i) Whether the judgment and decree rendered by the Lower Appellate Court suffers from illegality and perversity ?

ii) Whether the respondent-plaintiffs failed to discharge the onus in support of their averments made in the plaint ?”

The respondents have been served since long time back. However, there is not representation on their behalf as noticed by this Court in the various orders passed from time to time. Since RSA pertains to the year 2007, accordingly, I proceed to decide the same.

I have heard learned counsel for the appellant-defendants and appraised the judgments and decrees of the Courts below and of

the opinion that view expressed by the Lower Appellate Court by relying upon the one line in the cross examination with regard to age of the respondent-plaintiffs being minors would not tantamount to discharging the onus. It is settled law that plaintiffs have to lead direct and cogent evidence by discharging the onus and proving the averments on which the foundation of the suit was laid. Having failed to do so, in my view, the trial Court rightly dismissed the suit. Even otherwise, assuming for the sake of arguments, though not admitting, that they were minors, nothing surfaced that how the partition proceedings seriously prejudiced their rights as they have got the same share which they are entitled on majority. Even, the father, who, was arrayed as defendant No.14, appeared before the revenue Court and contested the partition proceedings. Khata is quite big as it measures 167 kanals. No other person has come forward to challenge the partition proceedings and partition order dated 13.11.1987 has attained finality. It is after losing battle, suit had been instituted in the year 1994. In my view, the Lower Appellate Court has not appreciated the aforementioned fact and has unsettled the settled things.

In view of the aforementioned facts and circumstances of the present case, judgment and decree of the Lower Appellate Court is hereby set aside and the substantial questions of law, as noticed above, are answered in favour of the appellant-defendants and against the respondent-plaintiffs and of the trial Court is restored.

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Suit stands dismissed.

Accordingly, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

April 12, 2016
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