

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

Date of Decision: January 21st, 2016

1. **R.S.A.No.1958 of 2008 (O&M)**

Manmohan & another

...Appellants

Versus

Tulsi Ram & others

...Respondents

2. **R.S.A.No.2484 of 2008 (O&M)**

Nanak Chand & others

...Appellants

Versus

Tulsi Ram & others

...Respondents

3. **R.S.A.No.2485 of 2008 (O&M)**

Nanak Chand & others

...Appellants

Versus

Yashpal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Amit Jain, Advocate,
for the appellants in RSA No.1958 of 2008.
Mr.Sanjay Mittal, Advocate,
for the appellants in RSA Nos.2484 & 2485 of 2008.
Mr.Keshav Pratap Singh, Advocate,
for respondent Nos.21 to 24 in RSA No.1958 of 2008 &
for respondent Nos.1 to 4 in RSA No.2485 of 2008.
Mr.Adarsh Jain, Advocate with
Mr.Kamal Advocate,
for respondent No.1 in RSA No.1958 of 2008 & RSA No.2484
of 2008.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of three Regular Second

Appeal Nos.1958, 2484 and 2485 of 2008 as the common questions of law and facts involved in all the appeals are the same.

The aforementioned appeals have been filed against the judgment and decree of the Lower Appellate Court, whereby the judgment and decree of the trial Court dismissing the suit of the respondent-plaintiffs, has been set-aside.

Mr.Amit Jain and Mr.Sanjay Mittal, learned counsel appearing on behalf of the appellant-defendants submit that umpteen number of documents were brought on record to show that the respondent-plaintiffs were not co-owners, much less they did not derive any right, title or interest or inherit any part of the share, allegedly owned by Parwati. Documents Ex.CD-5, Ex.CD-6 and Ex.CD-7 were discussed in extenso and the trial Court dismissed the suit, but, however, the Lower Appellate Court, without adverting to the aforementioned documents, has decreed the suit by adjudicating the share of the parties to the lis. In support of their contention, have drawn the attention of this Court to the judgment and decree of the Lower Appellate Court and, thus, submit that the following substantial question of law arises for determination by this Court:-

“Whether the judgment and decree of the Lower Appellate Court, being the last Court of law and fact, in not referring to the aforementioned documents amounts to illegality and perversity?”

Mr.Keshav Pratap Singh and Mr.Adarsh Jain, learned counsel appearing on behalf of the respondent-plaintiffs submit that there is no illegality and perversity in the judgment and decree. The Lower Appellate Court, being the last Court of law and fact, has examined all the documents

and thereafter decreed the suit.

I have heard the learned counsel for the parties and appraised the paper book.

On going through the judgment and decree of the Lower Appellate Court, I am of the view that the aforementioned documents have not even been discussed, much less, deliberated upon . The first Appellate Court, being the last Court of law and fact, is duty bound to discuss all the documentary evidence and thereafter form an opinion. Even the provisions of Order 41 Rule 31 CPC have not been adhered to. In my view, the appellant-defendants have been deprived of their right of first appeal in the absence of reference to the aforementioned documents. While adverting to the arguments of the parties, there is a reference of the documents, but it appears that the Lower Appellate Court remained oblivious of the same.

Accordingly, without commenting on the merits and de-merits of the case as to whether the plaintiffs are co-sharers or not, I deem it appropriate to remand the matter back to the Lower Appellate Court. Accordingly, the judgment and decree of the Lower Appellate Court is set-aside. The appeal is accordingly restored. The Lower Appellate Court is directed to decide the appeal as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear before the Lower Appellate Court on 15.2.2016.

Records of the Courts below be also sent back immediately.

Appeals stand disposed of.

January 21st , 2016
ramesh

(AMIT RAWAL)
JUDGE