

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

**RSA No.1793 of 2011 (O&M)
Date of decision:03.10.2016**

Jarnail Singh and another

... Appellants

Vs.

Rulia Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Dinarpur, Advocate
for the appellants

Mr. Vijay Kumar, Advocate, for
Mr. Munish Mittal, Advocate
for the respondents.

AMIT RAWAL J.

The appellant-defendants are aggrieved of the judgment and decree dated 10.02.2011 of the Lower Appellate Court, whereby, judgment and decree passed by the trial Court, has been set aside.

Mr. S.S.Dinarpur, learned counsel appearing on behalf of the appellant-defendants submits that the trial Court on the basis of the oral and documentary evidence dismissed the suit. Both the parties were in separate possession by constructing their respective houses. In fact, both the parties had raised their boundary walls and other constructions on the land which was in their exclusive possession. The trial Court after appreciating the evidence, much less, the admission part of the plaintiffs, i.e., 06 marlas of land was acquired by the PWD Department for constructing a road, nothing remained but to draw a conclusion that the parties to the lis were in their exclusive possession in view of their conduct but the Lower Appellate

Court has erroneously relied upon the entries recorded in the jamabandis as the same did not carry any weight *vis-a-vis* admission of the plaintiffs. In fact, the Lower Appellate Court has abdicated in not referring to the admission of the plaintiffs, thus, there is misreading and mis-construal thereof and urges this Court for setting aside the findings under challenge.

Per contra, Mr. Vijay Kumar, Advocate for Mr. Munish Mittal, learned counsel appearing for the respondents submits that the Lower Appellate Court being the last Court of facts and law after examining the oral and documentary evidence decreed the suit, particularly referring to the jamabandis which carry presumption of truth under Section 44 of the Punjab Land Revenue Act, remained un-rebutted as the property had been shown to be in joint ownership and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Dinarpur as the jamabandi for the year 1996-97 showed the joint ownership of the suit land, in equal share.

It is a matter of fact that 06 marlas of land was acquired by the State Government and mutation No.114 reflected the passing of the award. The plaintiff purchased the land in the year 1972, whereas, the acquisition of the land was done in the year 1973. The partition of the remaining land has been sought. Even if the possession of the same property had been in favour of one of the defendants, until and unless, he does not set up the plea of ouster, every co-owner deemed to be in possession of every inch of land. The private partition is not reflected in the revenue record. No doubt, the

parties can set up the oral partition but have to prove in the manner as if it was implemented in letter and spirit, much less, supported by documentary evidence. However, the plaintiff failed to lead the evidence, therefore, rightly so, the Lower Appellate Court, being the last Court of facts and law has decreed the suit.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the Regular Second Appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 03, 2016
savita