

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.2694 of 2011 (O&M)

Date of Decision.22.11.2016

Gurmit Singh and another

.....Appellants

Vs

Darshan Singh and others

.....Respondents

Present: Mr. Deepak Gupta, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.7314-C of 2011

For the reasons stated in the application, delay of 26 days in
refiling the appeal is condoned.

Application is allowed.

RSA No.2694 of 2011

The appellants-defendants are aggrieved of the concurrent
finding of fact whereby the suit of the plaintiff seeking following relief has
been decreed.

*“Suit for separate possession by way of partition of residential
house consisting of six rooms, darwaja, bath, kitchen and open
court yard as shown ABCD, in the site plan attached, bounded
as:-*

West 55' street

*East 44'-4” house of Natha Singh & 8'-3” house of Gurcharan
Singh*

North 93' Boota Singh

*South 81' house of Sita Singh, situated at village Kotha Guru,
Tehsil Phul Distt. Bathinda.”*

Mr. Deepak Gupta, learned counsel appearing for the

appellants-defendants submits that the respondent-plaintiff has not been

able to establish that the property was joint. In the absence of the same, the suit was not maintainable. Even otherwise the case set up is that there was some agricultural land which was alleged to have been partitioned and therefore, the suit was liable to be dismissed for partial partition. The onus of proving the nature of the property to be joint was heavily upon the plaintiff. Having failed to do so, the suit was liable to be dismissed.

He further submits that both the Courts below have ignored the fact that the appellants are living in disputed house since time immemorial and the respondent-plaintiff never claimed right on the house. Their possession is peaceful, uninterrupted and continuous. PW-4 Darshan Singh admitted that his father Natha Singh and father of defendant Raman Singh separated about 20-25 years ago, in essence, the property had already been partitioned and therefore, there was no jointness, thus, there is gross illegality and perversity.

Respondents have been served but there is no representation as has been indicated in the order dated 29.01.2015.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gupta, for, the appellants-defendants have set up a plea of adverse possession. Taking up of such plea tantamounts to admitting the ownership/co-ownership of the respondent-plaintiff, thus, it does not lie in the mouth of the appellants-defendants to allege that the plaintiff has not discharged the onus, in essence, in the suit for possession the onus keeps shifting as the parties in *lis* are at the same platform. On the contrary, the defendants have not been able to prove the ouster that is the ingredients of adverse possession which can be set up by co-owner in order to belie the

claim of of the plaintiff for separate possession. The onus qua proving partial partition was heavily upon the defendants but in the absence of any documentary evidence, the contention that the disputed house was already partitioned, is wholly misplaced and misconceived.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 22, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No

