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

**RSA-1218-2012 (O&M)
Date of decision : 10.08.2016**

Tejpal

... Appellant

Versus

Rakesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramender Chauhan, Advocate
for the appellant.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the claim in the suit for passing of preliminary decree of partition of the suit land according to their respect share by metes and bounds and for possession, has been declined by both the Courts below.

Mr. Ramender Chauhan, learned counsel appearing on behalf of the appellant-plaintiff submits that the land measuring 21 kanals 12 marals situated within the revenue Estate of Village Begampura Khotola, Tehsil and District Gurgaon, was owned of the appellant-plaintiff with his two brothers, namely, Bir Singh and Kirpal Singh half share each, whereas the other respondents-defendants half share. Most of the area of the land was constructed. When the respondents-defendants started digging the

foundation and adamant to construct the shops on the road site i.e. on the valuable land, they are requested not to do so. The appellant-plaintiff had filed the suit for partition and permanent injunction. The trial Court dismissed the suit. Even, the appeal filed against the same met with the same fate. In fact, both the Courts below have not appreciated the fact that the respondents-defendants had admitted in the written statement as an evidence that they have constructed the house over the suit land and some of the land is being used for shops. The respondents-defendants have changed the nature of the land, yet the Civil Court had a jurisdiction to try and entertain the suit. Earlier suit was dismissed as withdrawn on the ground that there was no adjudication and therefore, the present suit, lower could not have been dismissed being barred by law of limitation, thus, urges this Court for setting aside of the judgment and decree under challenge.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that jamabandi for the year 1988-89 shows the entire land to be irrigated, in essence, no part of it, is under construction. Khasra girdawari of Khariff 2004 also reveals that the entire khasra No.17/2 (6-16) is *gair mumkin* and Khasra No.18 is only 2 kanals of *gair mumkin makaan*, whereas the other area measuring 6 kanals is under cultivation. A similar khasra No.241 measuring 1 kanal 16 marlas is also under cultivation or vacant, thus, the cultivation portion and constructed portion had been mixed up. The plaintiff, in cross-examination, admitted that the matter of partition of the land was pending in the revenue Court. The defendants No.1 to 6, 8 to 10 and 14 never considered his claim. Even in the earlier litigation which was at the instance of Bir Singh defendant

No.15, the appellant-plaintiff-Tejpal was also read as defendant. It was dismissed as withdrawn on 05.09.2000, wherein the stand was taken that Bir Singh along with his brothers were in possession of separate shares as the land had already partitioned amongst themselves as per the settlement dated 25.09.2000, much less, the site plan (Ex.DW3/A), thus, in my view, an irresistible conclusion is arrived that the property had already been partitioned amongst the parties, therefore, no cause of action arises to file the suit. Both the Courts below, by noticing the aforementioned evidence, concurrently found that there was no cause of action for the appellant-plaintiff to seek the partition of the property already partitioned.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

10.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

Whether Reportable

Yes/ No