

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

RSA No.4268 of 2011 (O&M)

Date of decision : 14.09.2016

Anand and others

...Appellants

Versus

Daya Nand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.S. Malik, Advocate for the appellants.

Mr. R.S. Saroha, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.12338-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 67 days in filing of the appeal is condoned.

Application stands allowed.

Main Case

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for partition claiming 1/9th share in the suit property, by reversing the judgment and decree of the trial Court has been decreed being hit by partial partition.

Mr. R.S. Malik, learned counsel appearing on behalf of

appellants-defendants submits that partition sought was in respect of three properties whereas there are five properties, rightly so, the trial Court dismissed the suit. Even otherwise, it was categorical admission of the plaintiffs vis-a-vis admission of the partition effected on 09.05.1973. This fact itself was the striking feature for the dismissal of the suit and rightly so the trial Court dismissed the suit and lower Appellate Court has gone to the arena of conjectures and surmises, much less, not addressed the main issue and thus judgment and decree are not sustainable in the eyes of law.

Mr. R.S. Saroha, learned counsel appearing on behalf of respondent No.1 submits that factum of partition dated 09.05.1973 has not been reflected in the revenue record. The revenue record showed the joint possession. The trial Court erroneously dismissed the suit as there are three properties and appellants-defendants have not been able to prove on record the same and therefore, suit seeking partition has rightly been decreed and urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that the findings given by the lower Appellate Court is perfectly in consonance with the settled provisions of law. The manure pits was not the part of the joint khata and therefore, could not have partitioned and the same could not have been asked for and rightly so partition had been sought for three properties which were in joint holding. In my view, findings given by the trial Court is not sustainable and are liable to be set aside. The factum of the partition effected on 09.05.1973 has not been reflected in the revenue record. Be that as it may, it is settled law that in the absence of the evidence, the revenue record, carries presumption

of truth unless rebutted, has to be looked into.

I am of the view that reasoning given by the lower Appellate Court being last Court of facts and law does not warrant interference.

I do not find any illegality and perversity, much less, no substantial questions of law arises for determination.

Accordingly, present appeal is dismissed.

14.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No