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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-545-2011 (O&M)

Date of decision : 26.05.2016

Dalip Singh

... Appellant

Versus

Mewa Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.N. Moudgil, Advocate
for the appellant.

Mr. Arun Jain, Senior Advocate with
Mr. Arnav Kumar Sood, Advocate
for respondent Nos.1 to 3.

Ms. Kuldeep Kaur, Advocate for
Mr. K.S. Dhaliwal, Advocate
for respondent Nos.13 to 17.

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-defendant Nos.6 is aggrieved of the judgment and decree rendered by both the Courts below, whereby the preliminary decree in a suit for the partition of the land, in dispute, has been passed.

Mr. R.N. Moudgil, learned counsel appearing on behalf of the appellant-defendant No.6 submits, that prior to the institution of the suit, way back in the year 1950, the parties to the *lis* were allotted agriculture *abadi* land in Village Chappar Chiri Kalan, Mohali and in the year 1951, they raised the construction on the *abadi* land in the year 1951 and had been

living in their respective constructed portion and having possession thereof for almost half century back and moreover, documentary evidence i.e. Copy of partition deed dated 16.05.1951 (Ex.D-5) brought on record showed that the parties to the *lis* had partitioned the land long back and therefore, the suit was not maintainable. All these facts have not been noticed by both the Courts below and thus, there is illegality and perversity. He further submits that while drawing of the final decree, the continuous and existing possession, particularly in the *abadi* land, may not be disturbed as it would be in the interest and benefit of all the parties, in case, this Court uphold the finding.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Arnav Kumar Sood, appearing on behalf of the respondent Nos.1 to 3 submits, that writing dated 16.05.1951 (Ex.D-5) has rightly been rejected as it was not signed by all the parties and therefore, it would not have a binding effect. No other corroborative evidence has been led to show that the suit was bad for partial partition or the parties to the *lis* had already partitioned property. He further submits that against the judgment and decree, two set of appeals were filed one by the appellant-defendant No.6 and another by defendant Nos.2 and 7 to 11 and their appeal has been allowed as he has also sought a prayer for separate possession, and therefore, in the absence of challenge to the said decree, the present appeal is not maintainable, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that once, the *khata* shows the jointness and revenue record or *rapat roznamcha* do not indicate about the partition,

much less, the writing *ibid* not signed by all the parties, would not have a binding effect, therefore, the finding of the trial Court and the lower Appellate Court rightly passed the preliminary decree for separate possession by way of partition.

This Court is showing a little concern and giving the following observations, for, the parties to the *lis* had been in possession of the property since 1951, as and when application for drawing of the final decree is made, the Court shall be wary, while seeking the assistance of the Local Commissioner took into consideration existing possession.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below and the same are affirmed. No substantial question of law arises for determination and accordingly, the appeal is dismissed.

Resultantly, the appeal stands dismissed.

26.05.2016
yogesh

(AMIT RAWAL)
JUDGE