

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

RSA No.3471 of 2012 (O&M)

Date of decision:18.10.2016

Shamsher Singh

... Appellant

Vs.

Santokh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Madan Lal Saini, Advocate
for the appellant.

Mr. Vikas Singh, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, the suit for separate possession of 1/4th share by way of partition by metes and bounds of the property/house jointly owned and possessed by the parties in equal share, has been dismissed on the premise that there was already partition.

Mr. Madan Lal Saini, learned counsel appearing on behalf of the appellant-plaintiff submits that there are three chunks of property, one bearing khasra no.13//1/1 measuring 3 kanals 6 marlas and another is agricultural land. The proceeding seeking partition of the aforementioned agricultural land is pending adjudication before the revenue authorities. As

far as two houses are concerned, the present suit has been filed. However, vis-a-vis khasra no.13//1/1, the matter had reached upto this Court and the Lower Appellate Court in its judgment dated 11.12.2014 did not accept the contention of the appellant with regard to the alleged writing/understanding dated 25.08.1988 (Ex.D2) and 28.05.1991 (Ex.D3), in essence, the same have been ignored by the Court below and preliminary decree in respect of khasra no.13//1/1 measuring 3 kanals 6 marlas has been passed. The Regular Second Appeal filed against the aforementioned judgment has also been dismissed. In essence, the entire property amongst four brothers is joint. The Court below ought not to have dismissed the suit and thus, there is illegality and perversity in the findings under challenge, much less, substantial question of law arises for adjudication of the present appeal.

Per contra, Mr. Vikas Singh, learned counsel appearing on behalf of the respondents submits that assuming for an argument sake, though not admitting the preliminary decree qua khasra no.13//1/1 on which house has been constructed and the same has attained finality but the fact remains that the suit was dismissed in view of the preliminary decree as the suit was hit by doctrine akin to partial partition. Admittedly, there are three houses of the brothers, namely, Santokh Singh, Pritam Singh and Gurmit Singh but the instant suit is for only house on which Santokh Singh and Gurmit Singh are in possession and stated to have raised the construction. This fact surfaced from the cross-examination of the appellant-plaintiff and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the

judgments and decrees of the Courts below and of the view that the law of partial partition is no longer *res integra*. If at all the parties are co-owners/co-sharers and are joint owners of entire property, cannot seek the partial partition of two properties by ignoring the third one. Concededly, the house in possession on which the construction allegedly been raised by Pritam Singh has not been subject matter of the suit property, as noticed above.

In my view, the partition in the absence of non-joining of the other property, the suit is/was liable to be dismissed owing to the partial partition, particularly this Court had already upheld the findings rendered by the Lower Appellate Court in Civil Appeals No.204 and 205 of 2014 titled as Gurmeet Singh vs. Shamsher Singh and others, decided on 11.12.2014, is not with regard to khasra no.13//1/1, therefore, the findings of the Court below with regard to partition having already effected owing to the writing is not sustainable in the eyes of law as it will lead to material contradiction and far reaching consequences and there has to be consistency, thus, the finding of the Court below qua Ex.D2 and Ex.D3 is orbiter. Once all the houses are in joint ownership in abadi deh, the suit in respect of two properties is not maintainable owing to the preliminary decree.

In view of the aforementioned observations, 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 of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 18, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No