

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

1. RSA Nos.3910 of 2012 (O&M)
Date of decision : 28.09.2016

Sunil Mahajan and others

...Appellants

Versus

Wassan Singh Playia and others

..Respondents

2. RSA No.636 of 2013
Date of decision : 28.09.2016

Wassan Singh Playia and another

...Appellants

Versus

Sunil Mahajan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. A.S. Manaise, Advocate for the appellants.
(In RSA No.3910 of 2012) and
for the respondents (In RSA No.636 of 2013)

Mr. G.S. Bhatia, Advocate for the respondents
(In RSA No.3910 of 2012) and
for the appellants (In RSA No.636 of 2013)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two aforementioned regular

second appeals.

RSA No.3910 of 2012 is at the instance of defendant who are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby respondent(s)-plaintiff(s) had sought separate possession through partition by metes and bounds of the land measuring 3 kanals 6 marlas out of land measuring 13 kanals 5 marlas comprised in Rect. 15 Killa No.3/1 (2-16) Rect. 28 Killa No.23/1/1 (4-9), Rect. 28 Killa No.24/1/1 (4-2) Rect. 17 Killa No.23/2 (1-18) located in the revenue estate of Shehzada Nangal HB No.335 Tehsil and District Gurdaspur.

Mr. A.S. Manaise, learned counsel appearing on behalf of appellants-defendants submits that suit was not maintainable as the partition in respect of the property of land situated in Village Shehzada Nangal HB No.335 Tehsil and District Gurdaspur , has been sought, whereas the parties to the lis were also co-sharer in respect of land situated in Village Kotli Nangal, District Gurdaspur. He submits that as per the sale deed dated 07.10.1991 Ex.DA Wassan Singh had purchased the land from Ranjodh Singh and thereafter part of it was, vide sale deed dated 21.03.1996, sold to Vijay Kumar. As per the boundary described therein, certain parties were still shown as in ownership. Having not included of the same, the lower Appellate Court ought to have dismissed the same on account of doctrine akin to "Partial Partition". The aforementioned fact has not been taken care of by the appellate Court.

Per Contra, Mr. G.S. Bhatia, learned counsel appearing on behalf of respondent(s)-plaintiff(s) submits that sale deed Ex.DA does not

specify the area except for the boundaries and in the absence of same, it is too late in the day for the appellants-defendants to raise the plea of partition of the land situated in Village Shehzada Nangal HB No.335 Tehsil and District Gurdaspur. After obtaining instructions from his client, he submits that tomorrow through any source it is found that respondents-plaintiffs have some ownership, though has specifically denied, would not claim any share in the property. He also submits that in a suit for partition, all the parties are equally/similarly situated and once other co-sharer do not want jointness of the property, separate possession is the remedy. The lower Appellate Court has rightly ordered for drawing of the preliminary decree though trial Court had erroneously dismissed the suit.

I have heard learned counsel for the parties and appraised the paper book and of the fact that once sale deed of the year 1991 Ex.DA does not specify the area, is not discernible as to how much the area had been left with the ownership of Gurinderjit Singh except the boundaries is a hyper technical plea taken with regard to “Partial Partition” whereas property on the land situated in the revenue estate of Village Shehzada Nangal HB No.335 Tehsil and District Gurdaspur is out of the larger chunk of land.

In view of the aforementioned reasons, there is no force in the submission of Mr. A.S. Manaise, Advocate.

However other RSA No.636 of 2013 is arising out of filing of the suit filed by the respondent seeking injunction. Once preliminary decree has been passed which has been upheld, I am of the view that no cause of action survives and appeal has been rendered infructuous.

Parties shall be at liberty to move application for drawing of the final decree. Original record be sent back.

By upholding the judgment and decree of the lower Appellate Court, present appeal i.e. RSA No.3910 of 2012 stands dismissed.

28.09.2016

pawan

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No