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

RSA-4870-2012 (O&M)

Date of decision : 23.02.2016

Naurang

...Appellant

Versus

Jaipal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.R. Vohra, Advocate
for the appellant.

Mr. K.C. Rajput, Advocate
for respondent Nos.2 to 9.

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 judgment and decree of both the Courts below whereby, the suit claiming separate possession by way of partition has been rejected.

Mr. B.R. Vohra, learned counsel appearing on behalf of the appellant-plaintiff submits that both the Courts below have dismissed the suit on the ground that no documentary evidence, much less, title has been proved on record to stake the claim of the partition. The property is situated in Lal Dora of Village Uldepur. The respondents-defendants in the written statement admitted that the father of the parties was living in the house and came out with the plea that the appellant-plaintiff had relinquished the right, in view of the

settlement way back in the year 1957, but the settlement has not seen the light of the day, therefore, he had 1/5th share in the property owing into the demise of Ghaman, who died interstate and thus, urges to this Court to formulate the following substantial questions of law for determination:-

1. Whether in the absence of any testamentary documents, the successors of Ghaman would be liable to succeed estate in equal shares or not?
2. Whether the judgment and decree of both the Courts below suffers from illegality and perversity or not?

Mr. K.C. Rajput, learned counsel appearing on behalf of respondent Nos.2 to 9, submits that the thrust of the suit was based upon the fact that the property at the hands of the parties was ancestral, whereas no evidence has been led and rightly so, the suit has been dismissed. In respect of the property situated in Lal Dora, there is no title of the property. It has been admitted that he was staying in Sonipat and therefore, he had relinquished the right in residential property. No doubt, the appellant-plaintiff and the respondents-defendants are the brothers. In the absence of relinquishment as per settlement of 1957, he could not stake his claim by filing the suit and thus, prays for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the findings rendered by both the Courts below are not sustainable, in view of the fact that the respondents-defendants while rebutting the averment in paragraph 3 of the plaint stated as under:-

“That the contents of para No.3 of the plaint is wrong and denied. It is also wrong to alleged that house are ancestral property of the parties or previously the father of the plaintiff and defendants are owner in possession above said property and inherited by the

parties in suit after the death of their father. It is pertinent to mentioned here that the plaintiff is residing at Village Asawarpur, Tehsil and District Sonipat from the time of Badlu who was the grand father of the parties in suit in the age of 15/16 years old and he is residing there from that time till today. It is also pertinent to mentioned here that the land vide Regd. Sale deed No.2517 dated 23.7.57 was purchased by the father of plaintiffs and defendants in the name of Navrang plaintiff and he was minor on that time and nothing was paid by the plaintiff in the year 1957 for purchase the land on his name and share purchased in the name of Munshi defendant No.1 this sale consideration was paid by defendant No.1 himself/and/it was settled at that time that the plaintiff would reside at Village Asawarpur District Sonepat after his marriage at Village Asawarpur and he never claimed in the residential property in village Uldepur District Sonepat left by the father of the plaintiff and defendants and the same was admitted by the plaintiff and other members of the family. It is also pertinent to mention here that the land is situated within the Lal Dora of Village Uldepur and plaintiff have no right, title or interest in its no Kill No. or any Khasra No for its identity by which a person can claimed, that the property is left by the father of the plaintiff and defendants is mentioned. The story made by the plaintiff in this para is totally wrong, false and fabricated. It is also wrong to alleged that the houses in hands of defendants were owned and possessed by the father of parties in suit or they inherited the same from their father. The father of the parties had died near about 50 years ago and the plaintiff left the village Uldepur during the life time of his grand father namely Badlu and he has no right, title or interest in the hands of defendants. Rest of the para is wrong and vehemently denied.”

In view of the aforementioned facts, the factum of the ownership of the property at the hands of Badlu was admitted. The only ground to emphasis the plea that of the appellant-plaintiff had been, that he had

relinquished the right in the property, but no settlement has been proved on record. Once, Ghaman left behind, five surviving successors in the property owned by him, even if, situated in Lal Dora, would be succeeded in equal shares. In my view, the Courts below misdirected by non-suiting the appellant-plaintiff in not proving the title of the property . It is well known that there is no title in respect of the property situated in Lal dora.

Keeping in view the aforementioned facts, the judgment and decree of both the Courts below are set aside and the suit of the appellant-plaintiff for separate possession by way of partition is hereby decreed. Preliminary decree be prepared. Substantial question of law noticed above is answered in favour of the appellants-plaintiffs and against respondents-defendants.

With the aforesaid observations, the appeal is allowed.

23.02.2016
yogesh

(AMIT RAWAL)
JUDGE