

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.236 of 2013 (O&M)

Date of Decision: October 04, 2016

Jagdish Raj @ Jagdish Ram

...Appellant

Versus

Raj Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Parshotam Lal Singla, Advocate,
for the appellant.

Mr.Bhisham Kumar Majoka, Advocate for
Mr.Vikas Bali, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

CM Nos.647-C & 648-C of 2013

For the reasons mentioned in the applications, which are supported by affidavits, delay of 24 days in filing and 192 days in re-filing the appeal is condoned.

Applications stand disposed of.

CM Nos.649-C of 2013

Prayer in the application is for permission to make good the deficiency in the court fees.

Allowed subject to all just exceptions.

RSA No.236 of 2013

Appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for possession by way of partition after declaring the equal shares in the premises marked ABCD shown red in the site plan, i.e., double storey building consisting of a shop on the ground floor along with

stair case and two rooms, bath room and kitchen existing on the first floor as described in the suit, has been decreed and a preliminary decree has been granted to the extent that plaintiffs Raj Kumar, Rajesh Kumar sons of Sat Pal son of Harbans Lal and Krishan Lal son and Sheela Rani widow of Mulakh Raj have been declared owners to the extent of 1/6th shares each, whereas defendant is held entitled to the extent of 1/3rd share.

Mr.Purshotam Lal Singla, learned counsel for the appellant-defendant submits that the shop was purchased by the defendant out of his own savings, but somehow the same was recorded in the names of all the three brothers. The shop is of the appellant-defendant. The oral agreement has been proved on record, but in the meantime, there was a bereavement in the family and, therefore, the same could not be implemented, thus, the suit for partition was not maintainable as it was the exclusive ownership of the appellant-defendant.

Per contra, Mr.Bhisham Kumar Majoka, Advocate for Mr.Vikas Bali, Advocate, for respondent Nos.1 & 2 submits that the revenue record reveals the joint ownership and the preliminary decree has been passed on the basis of the revenue record and, therefore, there is no illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book.

In case, the argument of Mr.Singla is to be accepted, the defendant is setting up a plea of *Benami*. Nothing prevented the appellant-defendant from raising such plea. If he had done so, perhaps there could have been some force in the submission of Mr.Singla. Once the property is in joint ownership, rightly so the preliminary decree determining the share

has been passed.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below, which are based upon appreciation of oral and documentary evidence, much less no substantial question of law arises for determination. No case for interference is made out.

Appeal stands dismissed.

October 04, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No