

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

RSA No.462 of 2013 (O&M)

Date of decision: 2.9.2016

Satpal Gupta

... Appellant

Versus

Yashpal Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.S.K.Pipat, Sr.Advocate, with
Mr.Manoj Pundhir, Advocate,
for the appellant.
Mr.Anu Kumar Gupta s/o Shri Satpal Gupta-appellant in person
Mr.Harshit Jain, Advocate,
for respondents No.2 and 3 with
Mr.Naresh, respondent No.2 in person.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking separate possession by way of partition of the properties as mentioned in the head note of the plaint.

Mr.S.K.Pipat learned senior counsel assisted by Mr.Manoj Pundir submits that the suit for partition has been dismissed by the courts below on the ground that the appellant failed to discharge onus qua the property owned by common ancestor namely Babu Ram. He submits that there is categoric admission with regard to the ownership in para. 1 of the written statement.

During the course of hearing, this Court called upon Mr. Harshit Jain learned counsel appearing on behalf of respondents No.2 and 3 who stated that his claim is for agreeable partition of the other property except the residential house measuring 85 square yards where respondent-

defendant along with his family i.e. married son with their family is residing. This Court called upon defendant No.2 namely Shri Naresh present in Court and asked the price of the house of 85 square yards, gave its price about ₹ 35 lacs, though Mr.Pipat submits it to be much more but ultimately with the intervention of this Court, Mr.Pipat's client has consented at a price of ₹ 35 lacs. I intend to invoke the provision of Section 3 and 4 of the Indian Partition Act. Once the price of the property has been determined, 1/5 share of the appellant would be ₹ 7 lacs and equally so of the other co-owners. It is between defendant No.2. and other co-owners who have not come to this Court to settle regarding payment of the aforementioned amount, but the fact remains I have to determine share of all the co-sharers and cannot only vindicate the grievance of the plaintiff vis-a-vis, the other properties, both parties agreed that they have no grievance that in case a preliminary decree is passed. Accordingly, the suit is ordered to be decreed in the manner and mode indicated above, that all the property except "residential house" preliminary decree of partition is hereby passed. Regarding residential house, defendant No.2 shall make payment of a sum of ₹ 7 lacs to the plaintiff within a period of 3 months from the date of this order. In case, the defendants defaults in making payment, there shall be preliminary decree in respect of all the properties. The suit is accordingly decreed in the manner indicated above. The preliminary decree is ordered to be prepared. The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

September 2, 2016

Paritosh Kumar

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No