

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

RSA No.457 of 2016 (O&M)

Date of decision:22.09.2016

Balwant

... Appellant

Vs.

Ram Kanwar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Vikram Punia, Advocate  
for the appellant.

**AMIT RAWAL J. (Oral)**

Appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration of ownership of piece of land on the basis of the oral partition.

Mr. Vikram Punia, learned counsel appearing on behalf of the appellant-plaintiff submits that the oral partition is recognized in law. DW1- Ram Kanwar, in cross-examination was asked about the possession and the answer given was in positive. In this background of the matter, the suit for declaration with consequential relief of permanent injunction has been filed. No doubt, the revenue record showed the joint khata but the oral evidence brought on record showed that all the co-owners were in exclusive possession. He further submits that at least, the Court below ought to have granted the injunction as it would not be against the principles culled out by the Hon'ble Full Bench judgment of this Court in **Bhartu vs. Ram Sarup**

**1981 PLJ 204** and as well as, Division Bench of this Court rendered in **Bachan Singh vs. Swaran Singh 2000 (3) RCR (Civil) 70**, wherein, it has been held that a co-owner, who is not in possession of any part of the property, is not entitled to seek injunction against another co-owner who has been in exclusive possession of common property.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

Except the oral statement, there is no other evidence brought on record to show that the appellant had been in exclusive possession. The co-sharer in the absence of the partition is owner and in possession of every inch of land until and unless, the ouster is pleaded and proved. The remedy, if any, for the appellant is to seek partition as per law. The plaintiff should have proved exclusive possession but failed to lead any evidence.

I am afraid the aforementioned relief could not have been taken as decision culled out that jurisdiction of the Civil Court under Section 158(2) of the Punjab Land Revenue Act is barred and only application under Section 111 of the Act would be maintainable.

I am also of the view that the appellant-plaintiff has not been able to prove the oral partition and once khata is joint, rightly so, the Courts below have declined the relief.

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

September 22, 2016  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |