

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

RSA-3902 of 2015 (O&M)

Date of decision: 11.01.2016

Gurmej Singh

...Appellant

Versus

Santokh Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Vipin Mahajan, Advocate for the appellant.

Jitendra Chauhan, J.

The plaintiff/appellant filed suit for separate possession by partition by metes and bounds. The trial Court vide judgment and decree dated 08.05.2012, dismissed the suit.

Aggrieved against the findings of trial Court, the plaintiff/appellant filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 27.03.2015.

The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the plaintiff/appellant.

It is contended by learned counsel for the appellant that both the Courts below gravely erred in holding that suit land had been already partitioned between the parties. In fact, there was joint khata of the appellant and the respondents. The agricultural land of the appellant had been partitioned vide order dated 31.08.2010, passed by the Tehsildar-cum-AC 1st Grade, Gurdaspur (Ex.P4). Thereafter, the suit land measuring 5 kanals 8 marlas was kept joint, however, the learned Courts below have not taken into consideration this aspect of the matter. The documents Ex.D3 and Ex.D4 which the learned Courts below have relied upon were not proved by any independent witness. The learned counsel further submits that the appellant has fully proved his share in the suit property by leading oral as well as documentary evidence but the Courts below have not considered the same and dismissed the suit of the plaintiff/appellant. Therefore, the findings of learned Courts below on the issues framed are illegal and erroneous in the eye of law and therefore, both the judgments deserve to be set aside.

Heard.

The Court has perused the entire record. It was the version of the plaintiff/appellant that the suit land was never partitioned and it was gair mumkin in nature. But in his cross examination, the plaintiff/appellant, while appearing as PW1 had admitted that the suit land had been partitioned. Furthermore, it was not disputed by the parties that the original land measuring 94 kanals 10 marlas was a joint khata. The partition order Ex.P4 dated 31.08.2010 did not reflect if the khasra numbers in dispute had gair mumkin land or constructions. Naksha zeem, Ex.P5 showed that the property was agricultural in nature. The plaint and the written statement reveals that the property had construction on it and this version was reiterated by the plaintiff/appellant in his examination in chief. However, in his cross examination, he deposed against his own version and admitted pleadings of the defendants that partition had been effected and separate shares were being cultivated by the respective parties. On consideration, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial

question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

11.01.2016

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(JITENDRA CHAUHAN)
JUDGE