

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

RSA-5958 of 2015 (O&M)

Date of decision: 05.04.2016

Phool Chand

...Appellant

Versus

Savitri

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Dhiman, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-14865-66-C-2015

Keeping in view the averments made in the applications, which are duly supported by affidavits of the appellant, the same are allowed. The delay of 07 days in filing and 287 in re-filing the present appeal is hereby condoned subject to all just exceptions.

RSA-5958-2015

The suit for possession by way of partition filed by the plaintiff/respondent (for short 'the respondent') was decreed

by the trial Court, vide judgment and decree dated 27.01.2014.

2. Aggrieved against the findings of trial Court, the defendant/appellant (for brevity 'the appellant') filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 15.07.2014.

3. The 1st 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 has been filed by the appellant.

4. The brief facts of the case are that Dittu Ram was the owner of the suit property. After his death, the same was inherited by his two sons, namely, Sahaba and Kabal in equal shares. After the death of Sahaba, his son Mangal and thereafter, his grandson, Phool Chand, the present appellant, inherited half share in the suit property. The present respondent and her sister Shanti Devi also inherited half share each of their father Kabal after his death. Shanti Devi died issueless, therefore, her share also fell to the respondent. Kabal Singh, father of the respondent who was owner in possession of Gair Mumkin Bara comprising in khewat/khatauni No.520/797, khasra No.255(0-5), had bequeathed to the husband of the respondent by way of a Will

and another bara bearing khasra No.412 was also in possession of the husband of the respondent. The property in dispute was lying joint till date but the appellant had refused to give half share to the respondent in the suit property. Thereafter, the respondent has filed the suit which was decreed in the manner as mentioned above.

5. It is contended on behalf of the appellant that both the Courts below have gravely erred in passing the impugned judgments by ignoring the fact that the suit property had been already partitioned by Ditu Ram during his lifetime. The respondent had failed to prove that she is co-sharer and in joint possession of the suit property and without any cogent evidence on record, both the Courts below have decreed the suit in favour of the respondent. The respondent had duly admitted in his cross examination that the appellant along with his family member had been residing in the disputed property since beginning and the respondent was in possession before the death of her father. She further admitted that Kabal and Sahaba, sons of Dittu had been residing separately on the land under their possession and there was no dispute about their respective possession since beginning. Therefore, once the respondent herself admitted the

family partition, the impugned judgments and decrees ought to have been set aside.

6. Heard, the learned counsel for the appellant.

7. It is not in dispute that the suit property was owned by Dittu Ram and after his death, his sons Kabal and Sahaba had owned the same. As per the case of the appellant, the suit property had already been partitioned before the death of Dittu Ram. During the course of arguments, the learned counsel refers to the testimony of respondent, who appeared as PW-1, wherein she had admitted that both the sons of Dittu were in their separate possession since the very beginning and there was no dispute about their respective possession. However, the appellant while appearing as DW1 had admitted in his cross examination that till date the suit property was not partitioned and thus, he himself falsifies his stand taken before the Courts below that the suit property was already partitioned during lifetime of Dittu Ram. No evidence has come on record to establish that the suit property had been already partitioned. Once, the partition of the suit property has not been proved, then no other point has been left for consideration in the present appeal.

8. Therefore, in view of above facts and circumstances

of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. Therefore, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from consideration, nor there is any misreading of evidence.

9. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal.

Dismissed.

05.04.2016

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(JITENDRA CHAUHAN)
JUDGE