

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

RSA No.70 of 2015 (O&M)
Date of decision : 15.01.2016

Sant Kaur and others

...Appellants

Versus

Vasdev and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. H.S. Jugait, Advocate for the appellants.

Mr. D.S. Gurna, Advocate for respondents No.1 to 3.

AMIT RAWAL, J. (Oral)

CM No.209-C of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 47 days in refiling the present appeal is condoned.

Application is allowed.

CM No.210-C of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 33 days in filing the present appeal is condoned.

Application is allowed.

Main case

The appellants-defendants are in Regular Second Appeal against the concurrent findings of fact, whereby suit seeking separate possession by way of partition, has been decreed by both the Courts below.

Mr. H.S. Jugait, learned counsel appearing on behalf of appellants-defendants submits, that suit was barred by doctrine akin to res judicata inasmuch as that the respondents-plaintiffs had previously filed identical suit which was dismissed vide judgment and decree dated 15.11.2003. However, in appeal that said suit was withdrawn on the ground that it was suffering from inherent defect inasmuch that as all the co-sharers were not impleaded. The Sanad Taksim was done at the back of the appellants-defendants which cannot be executed by seeking the intervention of the Civil Court by invoking the jurisdiction of Section 9 of the Code of Civil Procedure.

Mr. Gurna, learned counsel appearing on behalf of respondents No.1 to 3 submits that aforementioned suits were withdrawn on the technical ground as other co-sharers were not impleaded and, therefore, no fault can be found in the findings rendered by the lower Appellate Court as judgment and decree are based upon appreciation of oral and documentary evidence. He further submits that Revenue Court had passed the order of partition and also had jurisdiction to execute the same, in case execution petition is brought within a period of three years & having not done so, remedy was to knock the door of the Civil Court which has been availed, thus, no substantial question of law arises for determination.

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

Shorn of the facts noticed above, I am of the view that admittedly parties to the lis are co-sharers if one of the co-sharer do not want the possession in joint, remedy is to seek the separate possession by way of partition. Once the co-ownership has been admitted and the Sanad Taksim ordered by the Revenue Court has not been challenged, much less, defendants have not been taken the plea of Ouster, no fault can be found with the findings rendered by the lower Appellate Court ordering partition of the property in determining the share of the parties by granting the relief of separate possession. The trial Court has passed the preliminary decree, whereas proceedings for drawing of the final decree are yet to be initiated.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court.

Accordingly, appeal is dismissed.

15.01.2016

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**(AMIT RAWAL)
JUDGE**