

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

RSA-5658 of 2014 (O&M)

Date of decision: 08.04.2016

Swaran Singh

...Appellant

Versus

Darshan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Natasha Munjal, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The suit for separate possession by way of partition filed by the plaintiff/respondents (for short 'the respondents') was decreed by the learned trial Court, vide judgment and decree dated 30.08.2011.

2. Aggrieved against the findings of trial Court, the defendant No.7/appellant (for brevity 'the appellant') filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 24.07.2014.

3. 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 has been filed by the appellant.

4. It is contended on behalf of the appellant that both the Courts below have misread and mis-appreciated the evidence on record. The respondents have failed to prove their right or title regarding the suit property. Wassan Singh, predecessor-in-interest of the respondents was not owner of any part of the suit property marked as ABCD. The learned counsel refers to the testimony of PW-2, Darshan Singh, wherein there is admission by him that he had no title deed regarding the suit property and further PW-3, Sarda Singh had also admitted in his cross examination that the plot in dispute has no khasra number and they have no title deed regarding the suit property. He had also admitted the possession of appellant over the plot marked as ABCD. The site plan Ex.P1, regarding the plot in question has got the same boundaries of the plot which was purchased by the appellant, vide agreement dated 29.10.1999. In fact, the respondent, Anoop Singh (since deceased) was not the owner of any share in the suit property. He had already left village Sabuana about 35 years back and had already sold his entire

property including the agricultural land to Sarda Singh and others. His father Wassan Singh was also not the owner of the suit property.

5. Heard, the learned counsel for the appellant.

6. The dispute is inter se the family members, who are sons, daughters and grandsons of Wassan Singh, the original owner of the property in dispute. Wassan Singh died about 20 years back. Wassan Singh had four sons, namely, Kesar Singh, Malook Singh, Anoop Singh, Ajit Singh and one daughter Jogindero. Kesar Singh and Malook Singh had already died. There were seven defendants before the trial Court. However, only the appellant, who is defendant No.7 before the trial Court, has assailed the impugned judgments and decrees of the Courts below. The appellant had filed separate written statement before the Court below, whereby he alleged that the respondents were in possession of plot and agricultural land in Basti Keemewali and defendants No.1 to 3 were owners in possession of the second plot which is plot in dispute. The respondent had sold the plot to Sarda Singh along with some agriculture land and now Sarda Singh is in possession of the plot which was sold by the respondents. The respondents have no share in the suit property

as the same had already been sold to Sarda Singh. However, on perusal of the testimony of Sarda Singh, who appeared as PW-3 reveals that he had specifically stated that he had been using the property on behalf of the respondent, Anoop Singh (since deceased) and he was holding the said property on behalf of the respondent. The respondents, the LRs of Anoop Singh, have duly proved on record that the suit property was ancestral property and they were co-sharers of the same by producing on record the certified copy of khatoni allotment Ex.PX, its Punjabi translation Ex.PX/1 and certified copy of khatoni Ex.PY. The photocopy of mutation No.706 regarding inheritance of Wassan Singh by his LRs had also been produced on record. Contrary to it, the appellant has failed to bring on record any evidence or document to show that the respondent had sold his property and had left the village about 20 years back. No document had been brought to substantiate the fact that the suit property had already been partitioned. Thus, in the absence of any cogent or convincing evidence on record, this Courts finds no merit in the present appeal.

7. 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.

No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence.

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

Dismissed.

08.04.2016

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(JITENDRA CHAUHAN)
JUDGE