

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

**RSA No.2589 of 2016 (O&M)
Date of Decision: February 09, 2017**

Ajmer Singh

..Appellant(s)

Versus

Kabal Singh (deceased) through LR's Ravinder Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ravinder Rana, Advocate
for the appellant.

ANITA CHAUDHRY, J.

CM-6881-C-2016

For the reasons set out in the application, same is allowed as prayed for and delay of 24 days in re-filing the present appeal is condoned.

RSA No.2589 of 2016

This is the defendant's appeal against the judgment of both the Courts below.

The dispute pertains to an area marked by letters ABCD shown in the site plan attached with the plaint. The plaintiff was asserting that he was the owner of this property along with his brothers. It was pleaded that in June, 1975 a settlement was effected and oral partition was effected between the brothers in the presence of Joginder

Singh, Karam Singh, Sewa Singh and Jaggar Singh. The oral family settlement was accompanied by delivery of possession and the area ABCD fell to the share of plaintiff Kabal Singh (since deceased). The plaintiff had pleaded that he along with his family members had shifted to Delhi but had been visiting the village off and on. The defendant who has his property on the Southern side of the suit property was bent upon interfering and dispossessing him.

The defendant took the plea that the plaintiff had not approached the Court with clean hands. The title of the plaintiff was disputed. It was denied that the plaintiff and his family were owners or that any settlement was effected. It was pleaded that plaintiff had left the village about 40 years ago and his possession was open and hostile and no-one had raised objection and the suit had been filed to extract money.

On the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to possession as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable?
OPD
4. Relief.

Both the sides led evidence and the plaintiff examined the executant of the memorandum of partition. The lower Court accepted the evidence and decreed the suit and restrained the defendant from carrying out any construction or from alienating or selling the property and injuncted him.

Aggrieved by the judgment, an appeal was preferred by Ajmer Singh. Cross-objections were also filed. The appeal filed by the defendant was dismissed whereas the cross-objections filed by the plaintiff were allowed and the judgment and decree of the lower Court was modified to the extent that the plaintiff was entitled to possession. The Appellate Court noted that the lower Court though had given a finding in favour of the plaintiff on issues no.1 & 2 but the relief of permanent injunction was only granted and the prayer for possession was neither rejected nor allowed. The judgment and decree of the lower Court was modified.

I have heard the counsel for the appellant at great length.

The defendant had denied the title of the plaintiff but in the written statement he had pleaded that his possession over the property was open and hostile, thereby admitting the plaintiff to be the owner. However, no issue was framed nor any evidence was led by the defendant. The plaintiff was successful in proving the memorandum of partition, which was more than 30 years old. The plaintiff had examined the executant of the memorandum and had rightly held that registration was not required. The appellant had failed to lead any evidence to show

that his possession was authorized or open & hostile and to the notice of the real owner. There is no infirmity in the findings recorded by both the Courts below.

There is no merit in the appeal and is dismissed in limine.

February 09, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No