

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3643 of 2016 (O&M)
Date of decision: 21.09.2017

Beera and others

...Appellants

Vs.

Bhim Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Akshay Jindal, Advocate for the appellants.

RAJIV NARAIN RAINA, J. (ORAL)

The plaintiff has filed a suit for partition as a co-sharer, but, did not put one property in *abadi deh* within the *lal dora* of the Village where he resided into the pool of family members to be partitioned. In his plaint he committed the first breach by not disclosing the ancestral nature of the house he lived in the village which also belong to other co-sharers and therefore, both the Courts have not committed any error in dismissing the suit for partition since the entire property was not put in the pot for division by sharers. A line here or a line there in the oral testimony comes to nothing since what is not pleaded cannot be proved by oral evidence and any statement made without pleading has no evidentiary value. The plaintiff did not plead anything regarding the status of the house in the village and, therefore, he failed to discharge the burden of proof and thereby the onus has not shifted on the defendants as has been urged before me at the time of hearing.

I would, therefore, find no infirmity in the judgments and

decrees of the Courts below dismissing the suit for partition claiming pre-liminary decree.

The regular second appeal is dismissed.

[RAJIV NARAIN RAINA]
JUDGE

21.09.2017

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Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***