

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

RSA No. 4287 of 2015 (O&M)

Decided on: 24.08.2017

Deepak Sharma

.....Appellant

versus

Krishna Rani

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashok Giri, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by defendant No.1 against the judgment and decree dated 08.05.2015 passed by Additional District Judge, Jalandhar, whereby, the appeal filed by the present appellant was dismissed and the judgment and decree passed by the trial Court in favour of respondent/plaintiff were upheld.

Brief facts of the case are that the plaintiff/respondent had filed a suit for partition and separate possession of the joint property comprised in khewat No.47 khatauni No.56 and khasra No.13//28 (0-14) situated at Village Lambra, Tehsil and District Jalandhar. It was pleaded in the suit that the suit property is a gair mumkin land and is owned by the respondent/plaintiff to the extent of 3621/3808 share i.e. area measuring 13 ½ Marlas and defendant No.1 is the owner to the extent of 76/3808 share. Likewise, it was pleaded that the defendant No.2 is the owner to the extent of 111/15232 share and defendant No.3 is the owner to the extent of 333/15232 share. It was further pleaded that the present appellant/defendant No.1 wanted to grab the valuable portion of the suit property. It was further pleaded that the plaintiff had requested the defendants to get the property

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partitioned by metes and bounds. However, they keep on deferring the matter, therefore, the suit was filed.

On notice it emerged that there was no dispute raised against or by the defendants No.2 and 3 in the suit regarding the suit property and there was total agreement between the parties qua their share. However, defendant No.1 appeared and contested the suit on merits. He pleaded that he is the owner of 85 sq.ft. Area in the khasra No.13//28 i.e. the suit property by purchase. It was pleaded by defendant No.1 that he has constructed a shop on the portion of the property under his possession and also got an electric meter installed therein. It was further pleaded by the appellant/defendant No.1 that there was an oral partition of the property and therefore, he was in exclusive possession of his portion. Hence he resisted the suit.

The trial Court decreed the suit by passing the preliminary decree, determining the shares of the parties and passing order that the plaintiff is entitled to separate possession by way of partition of the suit property. It was further ordered that since no agreed mode of partition between the parties was submitted before the Court, so as per Order XX Rule 18 of CPC, a partition of the shares cannot be conveniently made without further inquiry and therefore, the preliminary decree of partition was passed by the trial Court.

The present appellant questioned the judgment and decree passed by the trial by preferring appeal. However, the lower Appellate Court also upheld the finding of the trial Court.

Counsel for the appellant, while making his submission argued that since he has already constructed his shop on the suit property

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and the existence of the shop on the suit property has also been admitted by the plaintiff, therefore, the suit for partition could not have been decreed. It is further contention of the counsel for the appellant that by the decree passed by the Court his exclusive possession over the shop has been put in the realm of possibilities of being divested. Hence he is aggrieved of the judgment and decree of the Courts below.

A perusal of the file shows that it is not disputed by either side that they are the joint owners of the suit property. Even their shares are not in dispute. The only dispute is that the present appellant claims a specific part of the suit property as his own property on the basis that there was an oral partition between the parties, and therefore, he was put in exclusive possession of that portion of the suit property on which shop is constructed. However, the appellant has not led any evidence whatsoever to prove this contention regarding the oral partition of the suit property. It was for the present appellant to lead the cogent and convincing evidence regarding the oral partition and the severance of joint status of the parties, if he wanted to claim exclusive possession over a particular part of the suit property. However, he has chosen not to lead any evidence on that point. Therefore, the plea of the oral partition and therefore, a valid and legal exclusive possession over a particular part of the suit property; by the appellant; has rightly been discarded by the Courts below. Hence, there is no error in the findings recorded by the Court below in this regard.

One more aspect needs to be considered in this matter. The trial Court has passed only a preliminary decree determining the shares of parties only and making the parties entitled to separate possession by way of partition of the suit property by metes and bounds. Which of the parties

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would get what portion of the suit property is yet to be decided by the Court. The specific portion of the parties shall only be considered by the Court when partitioning the property by metes and bounds. In view of this also, the present appeal is rendered devoid of merit. The claims of the parties regarding possession over a specific parts of the property would be considered by the Court while finally partitioning the property.

No other point was argued by the learned counsel for the appellant.

In view of the above, the present appeal fails and is hereby dismissed. The judgement and decree passed by the Courts below are upheld.

24th August, 2017
Manju

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No