

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

RSA No.4399 of 2015 (O&M)

Date of Decision: August 01, 2017

Sukhraj Singh and others

... Appellants

Versus

Daljeet Singh and others

... Respondents.

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Singh, Advocate,
for the Appellants.

ANIL KSHETARPAL, J.

Defendants are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiffs had filed a suit claiming that they are co-owners in the joint land. It was further claimed by the plaintiffs that they are legally entitled to seek partition of the land by metes and bounds.

On notice, defendant Nos.1 to 4 contested the claim of the plaintiffs on the ground that the suit land had already been partitioned as per document dated 14.12.1965.

Learned trial Court after appreciating the evidence available on the file, recorded a finding of fact that the document/partition deed dated 14.12.1965 was not with respect to the land in dispute. Hence, learned trial Court decreed the suit filed by the plaintiffs.

First appeal preferred by the defendants against the decree passed by the trial Court has also been ordered to be dismissed after reappreciating the evidence available on the file.

I have heard the learned counsel for the appellants at length.

Learned counsel for the appellants has submitted that once it is established that vide document dated 14.12.1965, the land in dispute was partitioned, there was no occasion for the Courts below to order fresh partition of the property in dispute, once again. Learned counsel for the appellants has further submitted that evidence of DW1 has been misread as DW1 had stated that specific portion had come to the share of each co-owner.

I have considered the argument of the learned counsel for the appellants. However, the stand of the defendants/appellants in the written statement was that the parties have already partitioned the land vide document dated 14.12.1965. A reading of the aforesaid document proves that neither the land in dispute was partitioned nor included in document dated 14.12.1965. The revenue record also proves that the parties continue to be co-owners and no partition has taken place. Mere oral statement of DW1 cannot be preferred in the presence of overwhelming documentary evidence. Documentary evidence is always to be preferred in place of oral evidence.

For the reasons recorded above, I do not find any reason to interfere with the concurrent finding of fact arrived at by the Courts below.

The Regular Second Appeal is dismissed.

01.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No