

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

**RSA No.1164 of 2017 (O&M)
Date of Decision:11.08.2017**

Harbaj Singh and another

...Appellants

Versus

Utar Singh @ Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anupam Singla, Advocate
for the appellants.

ANIL KSHETARPAL, J.

Defendants are appellants in this Regular Second Appeal against the concurrent finding of fact. Defendants have challenged the passing of preliminary decree in a suit for separate possession by way of partition. Plaintiff had filed a suit for separate possession by way of partition with respect to land measuring 02 Kanal 01 Marla (Gair Mumkin-Non agricultural). Defendants objected to the suit on the ground that there was earlier settlement between the parties and in that settlement house comprising in rectangle No.115/1 was given to the defendants.

Learned trial Court after appreciating the evidence available on the file decreed the suit. Learned trial Court further held that Ex.D1, the alleged affidavit cannot be believed as neither any date has been mentioned on the affidavit nor the evidence of the attesting witnesses support the execution of the aforesaid document.

Appeal filed before the first Appellate Court was also ordered to be dismissed vide judgment and decree dated 30.11.2016.

Learned counsel for the appellants has submitted that appellants have a house in rectangle No.115/1 and appellants are only interested in protecting that house.

I have considered the submission of the learned counsel. The total land of the parties is 02 Kanal 01 Marla. Plaintiff claims half share. So remaining half share would go to the defendants/appellants. At the time of preparation of final decree, plaintiff can plead and prove the existence of house and the Court would keep in mind this fact while ordering final partition. At this stage only the preliminary decree has been passed which has been affirmed. The proceedings for final decree are yet to start.

Learned counsel for the appellants has not been able to point out any other error in the judgment. Parties are the co-owners.

In view of the above, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

11.08.2017
Parveen Kumar

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No