

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2056 of 2017 (O&M)
Date of decision: 30.08.2017

Ram Chander

..... Appellant

Versus

Madu Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rao Ajender Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.3 is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts.

Plaintiff filed a suit for possession by way of partition of the property. Plaintiff claimed that all the parties to this litigation are co-owners of the disputed property and the Court should partition the property and deliver the actual physical possession to the plaintiff. Defendant No.1 filed a written statement stating that he is the co-owner in possession of the suit property to the extent of 1/3rd share. He further submitted that no oral partition has taken place. Whereas defendant No.2 did not appear. Defendant No.3 filed a written statement to the effect that the land was orally partitioned between defendants No.1 to 3 about 30 years back.

Learned trial Court after appreciating the evidence available on the file held that the story of oral partition is not proved. It was recorded that as per the revenue record, the parties are recorded as co-owners. Thus,

a preliminary decree of partition was passed by the Court to the effect that the plaintiff is co-owner in possession of the suit property to the extent of 1/3rd share.

Appeal filed by defendant No.3 was also dismissed by the Court after re-appreciating the evidence available on the file.

Learned counsel for the appellant has submitted that the Courts have committed a material irregularity in failing to determine which party is in actual physical possession of a particular piece of land. He further submits that the Court has not even framed an issue to this effect. He has further submitted that the written statement filed by defendant No.1 could not be relied upon by the Court while recording a finding that the parties are co-owners.

I have considered the submissions, however, I do not find any force in it.

At the time of preliminary decree, the Court is to find out whether the parties are co-owners or not. In the present case, the revenue record clearly proves that the parties are co-owners. Even defendant No.1 has filed a written statement admitting the status of the parties as co-owners. Defendant No.1 is brother of defendant No.3. In these circumstances, there is no error by the Court in recording a finding that the parties are co-owners. The actual physical possession would be determined when the parties proceed to get the final decree for partition. At the stage of preliminary decree, the Court is not required to determine as to which portion of the plot is in possession of a particular co-owner.

Similarly, there is no force in the arguments of learned counsel for the appellant that no issue was framed by the Court to determine actual

physical possession of a particular co-owner on a particular piece of land. Once the parties are co-owner then they are deemed to be in possession of every part of the land. The actual physical possession would be taken into consideration at the time of passing of final decree of partition. At the stage of passing of preliminary decree, the Court was not required to determine this issue.

Learned counsel for the appellant has further submitted that the written statement filed by defendant No.1 admitting the parties to be co-owners could not be relied upon. He submitted that the defendant No.1 has made an admission against the interest of defendant No.3 and as such, the admission cannot be relied upon.

I have considered the argument. The admission in the pleadings is always to be preferred particularly when it is clear and specific. Pleadings are filed by the parties after considering all the aspects of the case.

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

Appeal is dismissed.

30.08.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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