IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.5910 of 2014(O&M)
Date of Order: 31.07.2017

Hardial Singh

..Appellant

Versus

Gurjeet Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Panag, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

Defendant no.1 is in Regular Second Appeal against the judgments passed by the Courts below, decreeing a suit for separate possession of the property by way of partition.

Plaintiffs had alleged that the properties, subject matter of the dispute, were joint between the parties and they want to partition the same. Whereas defendants had filed separate written statement asserting that the properties are no more joint, as the property in dispute has already been partitioned.

Learned trial Court after appreciating the evidence available on the file, found merit in the suit filed by the plaintiffs and decreed the same. Learned trial Court passed a preliminary decree.

Appeal filed by defendant no.1, has also been dismissed after re-appreciating the evidence available on the file.

I have heard counsel for the appellant at length.

Learned counsel for the appellant has submitted that the suit

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was bad in partial partition. Plaintiffs could not be permitted to file a suit with respect to a part of the property, which was joint between the parties. He submitted that the plaintiffs had to include their entire joint property in the suit.

I have carefully considered the submissions made by counsel for the appellant.

A reading of the judgment passed by the Courts below do not show that any such argument was ever raised before the Courts below. No issue to this effect was framed by the Courts. Therefore, learned counsel for the appellant cannot be permitted to raise such point, which can only be appreciated after permitting parties to lead evidence, for the first time in regular second appeal.

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. Therefore, the regular second appeal is ordered to be dismissed.

July 31, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

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

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