

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

RSA No.3354 of 2017 (O&M)

Date of decision : 08.09.2017

Ishwar Devi and others

...Appellants

Versus

Jasmail Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gourav Jain, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendant Nos.28, 29 and 31 are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for separate possession by way of partition of land measuring 2 kanals 5 marlas. The defendants in their written statement pleaded that the property has already been partitioned about 30 years ago vide document Ex.D2 and the parties are in separate possession in accordance with the document Ex.D2.

The learned trial Court after appreciating the evidence available on the file recorded a concurrent finding of fact that Ex.D2 does not relate to the property in dispute.

The learned First Appellate Court has also re-appreciated the evidence and upheld the findings of fact arrived at by the trial Court.

Learned counsel for the appellants has submitted that the

parties have constructed their respective houses and if the partition is allowed to be carried on, the houses will have to be demolished. He has further submitted that once it is proved on the file that houses have been constructed, therefore, the suit for partition was not maintainable.

I have heard learned counsel for the appellants and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants could not dispute the finding of the Courts that Ex.D2 does not relate to the land in dispute. As per the revenue record, the property is recorded to be joint. It is not the case of the defendants that the property is exclusively belongs to them only. The case of the defendants is that the property was joint but it has already been partitioned. Since, the sole defence of the plaintiffs was on the basis of writing Ex.D2 which does not relate to the property in dispute, therefore, no error found in the judgment passed by the Courts below.

Next submission of learned counsel is that since houses have been constructed, therefore, it would be very harsh for the parties if the houses are demolished. There is some substance in the argument, however, in the present case, only preliminary decree of the partition has been passed. The Courts while passing a final decree would take into consideration the respective possession of the parties as well as the construction raised thereon. At the stage of preliminary decree, this Court cannot interfere with the concurrent findings of fact. The stage of actual partition would come only when proposed mode of partition is prepared.

Appellants would be well-advised to raise objection in this regard at the appropriate stage.

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

Regular Second Appeal is dismissed.

08.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No