

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 18.09.2017****RSA No.4473 of 2017 (O&M)**

Harbhajan Singh & others

...Appellants

Vs.

Balbir Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Surinder Sharma, Advocate, for the appellants.

RAJIV NARAIN RAINA, J. (ORAL)**CM No.11663-C of 2017**

For the reasons mentioned in the application, the same is allowed and the delay of 285 days in re-filing the appeal is condoned.

CM No.11664-C of 2017

Deficiency in court fee has been made good, objections stand removed.

RSA No.4473 of 2017

In a suit for partition, a preliminary decree has been drawn defining the shares of the co-sharers. The appellants arrayed as defendants resisted the partition proceedings taking the plea of adverse possession over their share in the property claiming they have been in possession from the time of their father spreading over many decades from the minimum 22 years required to acquire title by this method and therefore their share was defined and not open to partition.

On facts, the co-sharers are not members of one family. They are third parties, who stepped into the shoes of the original co-sharers or so it

seems. The defendant/appellants have not been able to prove by production of legal evidence that their adverse possession was continuous, open, hostile and notorious to the knowledge of the other co-sharers. In any case, a co-sharer cannot take the plea of adverse possession against a co-sharer as is the settled legal position.

The Courts below have both concurred and in passing the order have disagreed that the plea set up by the defendant/appellants is not correct and have decided the issue against them. If the appellants have raised construction over the suit property and obtained an electric connection from the Nigam or have established a *Samadhi* of their father on the claimed land and planted trees that alone will not establish right to property through adverse possession. The plea of adverse possession actually means that one is not owner, but claims through adverse possession. To take the argument to its extreme, the defendants can be seen as canvassing that they are not owners at all. However, that plea was taken in the alternative and nothing more requires to be said on it in absence of title deeds and demarcation.

As far as affixing of deficient court fee is concerned with the trial coming to the conclusion that ad valorem fee should have been affixed on the plaint in the suit for partition by the plaintiff is an issue which has rightly been reversed by the learned Additional District Judge, Jalandhar vide his judgment and decree dated 22.01.2016. Mr. Sharma's argument that the suit should have been dismissed on this short ground, while supporting the findings of the trial court, is misplaced. Firstly, it is a technical argument and secondly, court fee is a matter between the court and the plaintiff and a close reading of the plaint and the prayers therein. Therefore, the entire suit of the plaintiff could not have been uprooted on a mere technicality. The

lower Appellate Court is satisfied with the Court fee paid and I have nothing more to say or add.

In view of the above, I find that there is no legal or factual infirmity in the findings recorded in the judgment in appeal. The findings of fact recorded by the Courts below against the appellant-defendant do not give rise to any substantial question of law for the consideration of this Court in the present regular second appeal.

Accordingly the appeal is held to be without any substance and is hereby dismissed.

18.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*