

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

**Regular Second Appeal No.668 of 2017 (O&M)
Date of Order: 18.07.2017.**

Chanan Ram and another

..Appellants

Versus

Ram Piari and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.Arora, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

Defendant nos.1 and 2 have filed the present Regular Second Appeal, against judgment and decree passed by the trial court, confirmed in appeal by the first appellate Court.

Plaintiffs-respondents had filed a suit for separate possession of 1/4th share by way of partition of shop measuring 4 marlas and 8 sarsahie. It was pleaded by the plaintiffs that shop is joint ownership of the plaintiffs-defendants. Plaintiffs prayed for separate possession by way of partition.

On notice, defendants in the written statement took a stand that the shop is under tenancy of firm M/s Grover & Company and since the firm has not impleaded as party-respondent, therefore, the suit is not maintainable. A separate written statement was filed by defendants no.3 to 6, stating that defendants no.1 and 2 have sold more than their share in the shop.

The learned trial court after appreciating the evidence led by the parties, partly decreed the suit filed by the plaintiffs and restrained the

defendants from alienating the same. However, the relief regarding separate possession of the disputed shop by way of partition was declined by the trial Court on the ground that the firm M/s Grover & Company has not been impleaded as party. M/s Grover & Company was stated to be tenant in the shop.

Plaintiffs preferred an appeal. It will be noticed that no appeal was preferred by the defendants.

Learned first appellate Court after re-appreciating the evidence available on the file, came to the conclusion that in fact the firm is not in possession as tenant. For the aforesaid reason, learned first appellate Court modified the decree passed by the learned trial Court and passed a decree for separate possession of the shop, in dispute, to the extent of 1/4th share in favour of the appellants-plaintiffs.

I have heard counsel for the appellants at length.

Learned counsel for the appellants has reiterated that since partnership firm, the alleged tenant has not been impleaded as party, therefore, the suit itself was not maintainable. He has further submitted that the judgments and decrees passed by the Courts below, are result of misreading of evidence.

I have considered the arguments of learned counsel for the appellants. It is the allegation of the defendants that the firm is tenant over the shop, in dispute. The learned first appellate court has found that the firm is not in possession. In any case, a tenant is not required to be impleaded as a party in a suit for partition. Partition is a dispute only between the co-owner. The rights of tenant would not get adversely affected. In a suit for partition, those rights cannot be adjudicated upon.

Counsel for the appellants has not been able to establish before me that the firm is in possession. He has admitted before me that firm consisted of partners who are family members and are parties to the suit. In these circumstances, the contention of the learned counsel for the appellants has no force.

Next submission of learned counsel for the appellants is judgments passed by the courts below are result of misreading of evidence. However, learned counsel for the appellants has not pointed out any substantive misreading of evidence. It may be significant to note here that defendants did not file first appeal. It was the plaintiffs, who has preferred the first appeal.

The finding of the trial Court that parties were joint owners has become final. Learned first appellate court has only modified the judgment and ordered that the appellants are entitled a decree for separate possession. Therefore, before the first appellate court, the limited issue was whether the plaintiffs are entitled to separate possession or not?

After hearing learned counsel for the appellants at length, I do not find any substantial questions of law, involved in the present case. Counsel for the appellants has further not been able to point out any error in the judgments and decrees, falling within the parameters of Section 41 of the Punjab Courts Act, 1918. Therefore, finding no merits in the appeal, the same is hereby dismissed.

July 18, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No