

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

RSA No.908 of 2017 (O&M)

Date of decision : 28.11.2017

Lekh Raj

...Appellant

Versus

Des Raj and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Dhawan, Advocate for the appellant.

Mr. Lakhwinder Singh Mann, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for partition of the house filed by the plaintiffs.

It is the case of the plaintiffs that the property in dispute was allotted to the father of the parties i.e. Ram Dass on 29.09.1964. Two plaintiffs i.e. Des Raj and Darshan Singh sons of Ram Dass had sought partition of the house which was initially owned by their father.

The defendant, the third brother (the appellant before this Court) pleaded that in fact the family was having two properties i.e. plot No.37 (in dispute in the present litigation) and plot No.32. It was further pleaded that Charan Kaur, the mother of the parties had partitioned the properties and the plot in question i.e. plot No.37 was given to him and the

defendant had raised construction and got electric connection whereas property No.32 was given to other brother.

In replication, the plaintiffs pleaded that in fact property No.32 was allotted to plaintiff No.1 in the year 1973 whereas Darshan Singh i.e. plaintiff No.2 is living in Ludhiana at plot No.16.

Both the Courts below on appreciation of the evidence available on the file decreed the suit filed by the plaintiffs. The Courts held that the defendant failed to prove that plot No.32 was also owned by father Ram Dass. The Courts held that plot No.32 was in fact allotted to plaintiff No.1 in the year 1973 and allotment letter is Ex.P1 on the file.

The Courts further held that the plaintiffs have failed to prove that Charan Kaur had ever partitioned the properties owned by the father.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that in fact property i.e. plot No.32 was allotted to the plaintiff being elder son as by that time, Ram Dass father of the parties had died. He submits that this property was allotted to the family and not to plaintiff No.1 alone.

As noticed by the trial Court, Ex.P1 is the allotment letter in favour of plaintiff No.1. The allotment is in the name of plaintiff No.1 only. The defendant-appellant has failed to lead any evidence to prove that this allotment was made either to the family or in the name of plaintiff No.1 on account of the death of Late Sh. Ram Dass, father of the parties.

Learned counsel for the appellant has further argued that the

plaintiffs wanted to produce on record an affidavit executed by plaintiff No.2 admitting that the property at Ludhiana was jointly purchased.

Learned counsel has submitted that he had filed an application for additional evidence which has not been decided.

On the other hand, learned counsel for the respondents has pointed out that the application for additional evidence has been decided vide order dated 18.08.2016 by a separate order.

Learned counsel for the appellant has not even challenged the aforesaid order.

In any case, the plaintiffs had filed a suit on 25.10.2012. The alleged affidavit is of the year 2010 which is neither part of the pleadings nor part of the evidence led by the parties.

The additional evidence sought to be produced by the plaintiffs is clearly beyond the pleadings and the evidence led by the parties.

Hence this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the aforesaid judgment.

28.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No