

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

516

RSA No.3759 of 1997 (O & M)
Date of Decision:23.03.2018

Jai Narain and another

...Appellants

Versus

Umrao and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Yadav, Advocate
for the appellants.

Mr. Ajay Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court dated 09.09.1997.

In the considered opinion of this Court, question of law which would require determination is whether a suit filed for partition can be dismissed by the Court after recording a finding that the property is joint between the parites.

Plaintiffs-appellants filed a suit for partition of the property shown in red colour vide letters 'A', 'B', 'C', 'D', 'E' and 'F'. Plaintiffs claimed that they are owners to the extent of 1/4th share, whereas the defendants are owners of remaining 3/4th share. Defendant No.1 only contested the suit. Defendant No.1 pleaded that this property is exclusively owned by him and he has constructed three rooms, one 'baithak' and one 'chappar' on the suit property.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff. However, learned First Appellate

Court has chosen to accept the appeal and reverse the judgment of the learned

trial Court on the ground that the plaintiff has failed to prove as to what is his share in the property.

It may be noticed that previously also plaintiff No.1 had filed a civil suit claiming that he is joint owner of the property against the parties to this litigation. In the previous suit, which was decreed on 24.05.1986, parties were declared to be joint owners of the property.

Plaintiff had examined two witnesses. Both the witnesses have said that they are owners to the extent of 1/4th share in the joint property. The entire cross-examination of the witness is directed towards the fact that the defendant is claiming himself to be an exclusive owner of the property. Such being the position, there was evidence available on the file to prove that the plaintiffs are owners to the extent of 1/4th share.

Still further, the property originally was owned by four brothers namely Khub Ram, Ganeshi Lal, Bhagwan and Maru. Plaintiffs are successors of Khub Ram. Plaintiffs have only claimed one-fourth share of the property. Learned First Appellate Court has committed material irregularity in dismissing the suit even after recording that the parties are co-sharers and joint owners. In the absence of any record to the contrary, inference has to be that the parties are owners to the extent of equal share.

In view of the aforesaid, the question framed is answered in favour of the appellant. The judgment passed by the learned First Appellate Court is set aside and that of the learned trial Court is restored.

Hence the regular second appeal is allowed.

23.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No