

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

**RSA No.2006 of 1998**

Raghubir Singh

....Appellant

Versus

Smt. Paramjit Kaur and Ors.

....Respondents

**Date of Order: 06.3.2018**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Rajeshwar Singh Thakur, Advocate for the appellant.

Mr. Vaibhav Narang, Advocate for the respondents.

**AMIT RAWAL, J (ORAL)**

Appellant-plaintiff is aggrieved of the concurrent findings of fact whereby his suit for separate partition by means of partition by metes and bounds of the suit property has been dismissed by both the courts below.

In nutshell, the facts of the case are that the plaintiff filed a suit on the premise that one Smt. Guro widow of Ram Singh (grand-mother of the plaintiff) was owner of two house bearing MC No.4171/33, new No.8912/33 situated in Kot Baba Deep Singh Gali no.5 and house No.8911/33, gali no.5 Kot Baba Deep Singh, Amritsar. During her lifetime, she used to treat the plaintiff like her son and vide will dated 06.6.1970, she bequeathed one-half share in both the houses to the plaintiff and the other half share to the father of the plaintiff, namely Harbans Singh. On demise of Harbans Singh, plaintiff-appellant had a share in the remaining property of Harbans Singh. In this background, separate possession was sought by

way of partition.

Defendant Nos.1 to 3,5 & 6 contested the suit by filing collective written statement on the premise that the plaintiff was not in physical possession of the suit property much less challenged the maintainability of the suit that the property had already been partitioned vide registered partition deed dated 18.2.1972 whereas the relationship of the defendants with said Smt. Guro was admitted. It was averred that the plaintiff having severed by his ties and connection, relinquished his all rights of relationship with his father Harbans Singh, Paramjit Kaur, his mother and other defendants as his brothers adopted by Smt. Guro. In fact, by virtue of the partition, the plaintiff had got entire house and certain immovable properties. Harbans Singh during his life time executed the will dated 04.8.1972 whereby the property in question as well as other houses fell to the share of defendant No.1. He, thus prayed for dismissal of the suit.

On the basis of pleadings of the parties, the trial Court framed the following issues:

*“1. Whether the plaintiff the owner of ½ share in the property and is entitled to the separate possession by partition?OPP*

*2. Whether the property already stands partitioned vide partition deed dated 18.2.1972?OPP*

*3. Whether the suit is properly valued for the purposes of court fee and jurisdiction?OPP*

*4. Whether the suit is bad for non-filing of the plan of the suit property?OPD*

*5. Whether the plaintiff was adopted by Smt Guro as son. If so its effect?OPD*

*6. Relief.”*

Plaintiff in support of his evidence examined PW1-Nazir Singh, PW2 Kartar Singh, who has proved will (Ex.PW2/1) besides stepping into witness box as PW3 and thereafter closed the evidence.

On the other hand, the defendants examined as many as 10 Dws apart from tendering partition deed (Ex.D1), Ration Card Mark 'A', certified copy of Agreement Mark 'DZ', certified copy of plaint (Ex.DW7/1), certified copy of written statement (Ex.DW8/1) and receipt Ex.DX before closing their evidence.

The trial Court on the basis of preponderance of evidence, dismissed the suit and the appeal filed by the plaintiff was also met with the same fate by the lower Appellate Court, hence the present appeal.

Learned counsel for the appellant-plaintiff submitted that the will dated 06.6.1970 had not been denied by the defendants and the registered partition was not fair one and the same was procured under coercion and pressure upon the plaintiff as he had share in the other houses also, which had been denied to him, therefore both the judgments and decrees passed by both the courts below are the result of misreading of evidence. In fact both the courts below have totally ignored the fact that in view of the Will, the appellant-plaintiff was entitled to half shares of said Smt. Guro and after the death of his father, Harbans Singh, he was/is also entitled to 1-7<sup>th</sup> share.

Per contra, learned counsel for the respondents-defendants submitted that the registered partition deed had been proved to be valid and no contrary evidence was brought on record to disbelieve the same. By virtue of registered partition deed, plaintiff was given appropriate share, therefore, the suit was not maintainable and has rightly been dismissed.

Having heard learned counsel for the parties and appraised the case file, I am of the opinion that there is no force in the contention of learned counsel for the appellant as the registered partition deed dated 18.2.1972 has been proved to be genuine in terms of testimonies of the witnesses. Plaintiff cannot take benefit of will dated 06.6.1970 whereby he was given half share in both the houses. It has come on record that the partition deed dated 18.2.1972 had come in existence during the life time of Harbans Singh, father of the plaintiff, in pursuance of which the plaintiff had relinquished his rights. There was equal distribution of the property and therefore, in my view, filing of suit was nothing but an act of aggrandizement. No other point has been urged by learned counsel for the appellant to enable this Court to differ with the concurrent findings of facts. Appeal is devoid of merit much less no substantial question of law arises for determination.

Dismissed.

**March 06, 2018**  
**manoj**

**^(AMIT RAWAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable : Yes/No