

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA No.1755 of 1999 (O&M)

Date of decision: 07.12.2018

Dan Singh

..... Appellant

Versus

Shantra Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. O.P. Sharma, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court, operative part whereof is extracted as under:-

“I have carefully considered the pleading, evidence impugned judgment and decree and above submissions. There is no dispute that from the sale deed Ex.P1 it stands established that the plaintiff purchased an area of 6½ marlas (200 yds.) from the total suit land measuring 5 kanals, 4 marlas. There is also no dispute that defendant No.6 also purchased land from the total suit land from the other co-sharers including defendants No.2 to 5. But the plaintiff has failed to prove, if he is owner in possession of the specific portion. Even learned lower Court has observed that truly suit land has not been partitioned. The learned lower Court passed decree in favour of plaintiff-respondent observing that the sale deed in favour of plaintiff is of date earlier than the sale deed of the contesting defendant-

appellant. It is true but on the date of institution of the suit, the contesting defendant-appellant had become a co-sharer in the suit land. Hence, I agree with the contention of learned counsel for appellant (defendant No.6). In view of my above detailed discussion and for the fore-going reason, the appeal is accepted with costs impugned judgment and decree set aside and the suit is dismissed with costs. Decree sheet be prepared accordingly and file be consigned to the record room after due compliance.”

It is undisputed that the plaintiff has purchased 6½ marlas of land (200 sq. yds.) in a joint Khata measuring 5 kanals and 4 marlas. Defendant No.6 has also purchased some part of the property through two different registered sale deeds.

Learned counsel for the appellant has submitted that he should be declared owner of 6½ marlas of land specific portion which was purchased by him. He submitted that since he had purchased the property prior in point of time, therefore, he has the first right and the vendors of the plaintiff have made a statement in the Court that they had delivered the possession to the plaintiff.

As regards declaration, learned First Appellate Court has rightly held in Para No.11 itself which has been extracted above that the plaintiff has purchased an area of 6½ marlas of land i.e. 200 sq. yds. However, the plaintiff through the present suit want a declaration that he is owner in possession of the specific portion identified by the properties located on all four directions. Once it is a joint property and the plaintiff as well as defendant No.6 have purchased the property from a joint Khewat, then every one has become co-sharer and therefore, the learned First Appellate Court has rightly held that if any co-sharer want partition and wish to be declared as owner of specific portion, then the remedy is to file

the partition proceedings. It is fundamental that every co-sharer is owner of every part of the land in an undivided khata and no one can be declared owner of specific portion unless the property has been partitioned.

Appeal is dismissed.

07.12.2018

Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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