

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

RSA No.2677 of 2007 (O&M)

Date of decision : 21.11.2018

Kamal Singh

...Appellant

Versus

Sube Singh (since deceased) through his LRs and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Jitender Nara, Advocate for the appellant.

Mr. Vijay Rao, Advocate for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for possession by way of partition of plot measuring 1146 square yards fully described in the heading of the plaint.

It is undisputed that the aforesaid property had come from a common ancestor.

The defendants who were two in number contested the suit and pleaded that in the year 1964, all the properties had been partitioned including the disputed property which has fallen to the share of the defendants.

Both the Courts on appreciation of the evidence have found that the property in dispute continue to be joint property and never subject matter of the partition.

The First Appellate Court, further found that the properties

depicted by lay out plans Ex.D5 and Ex.D6 have already been partitioned and, therefore, the plaintiff was not required to include those properties in the present suit.

Although, learned counsel for the appellant made sincere attempt to persuade this Court to take a view that in the partition which was held in the year 1964, the property in dispute had fallen to the share of defendant-appellant, however, in absence of any substantive evidence, learned counsel could not succeed. Still further, learned counsel for the respondent-plaintiff has pointed out that with regard to other residential properties depicted by lay out plans Ex.D5 and Ex.D6, another suit was filed in between the brothers seeking partition which has been dismissed on the ground that the aforesaid properties have already been partitioned. This fact is not disputed by the learned counsel for the appellant at the time of arguments, although the aforesaid judgment is not a part of the record.

Keeping in view the concurrent findings of fact, which is neither shown to be perverse nor result of any error, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**21.11.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                  Yes/No**