

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

RSA No.4992 of 2009 (O&M)

Date of Decision: February 06, 2018

Ramesh and others

...Appellants

Versus

Sher Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.A.P.Bhandari, Advocate for
the appellants.

Mr.Y.P.Khullar, Advocate for
respondent No.1.

Mr.Pritam Saini, Advocate for
respondent No.2.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below, whereby, the suit of the plaintiffs – appellants has been dismissed.

The plaintiffs had filed a suit seeking a decree of partition by meets and bounds in respect of the suit properties and for restraining the respondents from raising unauthorised construction on any part of the suit properties. As per the plaint, Tulli Ram was the owner of the residential properties, subject matter of the suit. Tulli Ram had three sons: Udey Singh, Sher Singh and Buddha. The plaintiffs are the legal representatives of Udey Singh. Sher Singh was arrayed as defendant No.2 and the legal representatives of Buddha were defendants No.2 to 8.

It was claimed that all the three sons of Tulli Ram had 1/3rd share in the suit properties; that the suit property was joint and had not been formally partitioned. It was only for convenience that the parties were using the suit property and that the plaintiff was in possession of less than his 1/3rd share in the suit property. The case of the defendants- respondents was that the parties had separated long ago and were living separately after getting the properties partitioned mutually in the year 1961. After the partition, the parties had made additions and alterations as per their need in their respective portions after getting site plans sanctioned from Municipal Committee, Palwal. The parties were paying house-tax of their respective houses separately.

On the basis of the evidence, the courts below concluded that the residential properties were no longer joint, the appellants and the respondents were having separate portions in their possession and they had got constructed their houses after getting their site plans sanctioned. The site plans were placed on record as Ex.DW2/1, Ex.DW2/2 and Ex.DW2/13. This was further clear from the copies of the House Tax Assessment Registers, which showed the appellants and respondents to be owners in possession of their separate portions. Even the plaintiffs had submitted site plan with the Municipal Committee, Palwal and after getting it sanctioned, had raised constructions over their portions. It was concluded that the properties mentioned in para No.1(a) to (c) of the plaint were undisputedly dwelling houses and the evidence left no scope for doubt that the properties had been partitioned, which was further fortified by the conduct of the parties behaving in a manner that the partition of the properties had already

taken place.

There appears to be no illegality or infirmity in the aforesaid findings and this appeal is accordingly dismissed.

It however needs to be added that the suit has been decided on the premise that the properties subject matter of the plaint are included in the separate site plans Ex.DW2/1, Ex.DW2/2 and Ex.DW2/13, which as per the evidence on record had been partitioned.

Learned counsel for the appellants contended that there are some vacant spaces shown in the site plan Ex.P1 and P2, which have not been partitioned. If there is any such or other property that is found to be joint, the parties are at liberty to get it partitioned in accordance with law.

February 06, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No