

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

RSA No.1019 of 2012 (O&M)

Date of decision : 27.08.2018

Rattan Singh and another

...Appellants

Versus

Pardhan Singh

...Respondent

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

Present: Mr. Satbir Rathore, Advocate for the appellants.

Mr. R.S. Chauhan, Advocate for the respondent.

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

The plaintiffs-appellants are in the Regular Second Appeal against the judgment passed by the First Appellate Court reversing the judgment and decree passed by the trial Court.

The plaintiffs claiming that the plaintiffs and the defendant are co-sharer in the joint land, sought decree for permanent injunction restraining the defendants from changing the nature of the suit land till the valid partition takes place.

On the other hand, the defendant pleaded that the suit property has already been partitioned and the defendant has also raised the construction of land comprised in khasra No.1667 to the extent of half share and remaining portion is in possession of the plaintiffs.

Learned trial Court decreed the suit only on the ground that as per the revenue record, no partition has taken place and, therefore, the co-sharer is not entitled to raise any construction. However, the First Appellate Court found that the house of the defendant is already in existence and he is

only wanting to lay a fresh floor in his house. The First Appellate Court further noticed that the plaintiffs have already constructed their house in khasra No.3559. The Court further found that the major part of the area is already *abadi* being comprised in khasra Nos.1661, 1666 and 1667.

Learned counsel for the appellants, at the time of the arguments, has submitted that against the partition proceedings, the revision petition was pending before the Court of Financial Commissioner (Appeals) Punjab at Chandigarh, who has directed the revenue authorities to finally decide the partition proceedings within a period of 3 months. In fact, if one carefully reads the order, it has been passed with the consent.

Keeping in view the finding of the First Appellate Court wherein it has been noticed by the Court that the plaintiffs have also raised their construction, there is no justification for the plaintiffs to restrain the defendant from raising the construction. Needless to say that any fresh construction raised during the pendency of the partition proceedings, would not be used by the defendant to claim any equity or right over a particular piece of the property in the partition proceedings.

With these observations, the present Regular Second appeal is dismissed.

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

**27.08.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**