

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

**RSA No.4625 of 2011 (O&M)
Date of decision : February 21, 2018**

Bhalle Ram and others

..... Appellants

Versus

Smt. Ram Rati and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kulvir Narwal, Advocate for the appellants.

Mr. R.S. Kundu, Advocate for respondent No.1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the judgment dated 18.10.2010 passed by learned Addl. District Judge, Rohtak, affirming the judgment and decree dated 11.06.2009 passed by learned Civil Judge (Jr. Divn.), Rohtak, vide which the suit of the plaintiff-respondent No.1 was partly decreed and partly dismissed. A preliminary decree to the extent of 1/3rd share was passed in favour of the plaintiff regarding the property mention in the detail in para No.2 of the plaint.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Plaintiff Hawa Singh had filed a suit for partition, claiming 1/3rd share in the agriculture land as well as three other properties, mentioned in the plaint. Hawa Singh died on 17.09.2003 and was represented by his only legal heir Smt. Ram Rati (respondent No.1), daughter. The plaintiff had claimed that the suit property is jointly owned by

his father Dara Singh. Defendant No.1, in order to deprive the plaintiff, suffered a civil court decree dated 11.08.1987 in favour of four sons of defendant No.2 against which he filed a civil suit, which was decreed on 21.05.1997 and the appeal against the said decree was dismissed on 21.05.1999.

In the written statement, defendant No.1 claimed that he is exclusive owner in possession of the suit property and the plaintiff has no concern with the same. Defendant No.1 further claimed that he has executed a Will regarding the suit property in favour of his grandsons on 23.05.1997. Thus, all the grandsons are owners in possession of the said land.

It is to be added that Dara Singh also died during the pendency of the suit and was sued through his legal heirs.

From the pleadings, following issues were framed:

(1) Whether the plaintiff is entitled for partition of joint property by metes and bounds, as alleged, if so, to what effect? OPP

(2) Whether the suit is not maintainable and plaintiff has no cause of action to file the present suit? OPD

(3) Whether the plaintiff has no locus-standi to file the present suit and the present Court has no jurisdiction to entertain the present suit? OPD

(4) Whether the suit is not properly valued in terms of Court fees? OPD

(5) Relief.”

The trial Court held that the plaintiff is owner to the extent of 1/3rd share in the disputed property, which are residential house, *baithak* and plot, whereas the partition regarding the agriculture land was disallowed.

Learned counsel for the appellants has argued that in this case, the trial Court on the basis of the admission of one DW2 Ram Kumar held that the suit property is ancestral and therefore, the plaintiff has 1/3rd share in the same and Dara Singh could only gift away his share of the property.

It comes out that in the earlier litigation between the parties, the findings regarding the status of the disputed property was established. Therefore, the findings of the previous suit have become final between the parties. The plaintiff having 1/3rd share, was rightly allowed the partition regarding the said 1/3rd share of the disputed property except the agriculture land. The findings of facts have been recorded. No law point is involved in the present regular second appeal. There is no ground to interfere in the concurrent findings of facts recorded by both the Courts below.

As such, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

February 21, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No