

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

RSA No.4982 of 2011

Sushant and Anr.

....Appellants

Versus

Rajvir and Ors.

....Respondents

And

RSA No.2897 of 2015

Maya Devi and Anr.

....Appellants

Versus

Girraj and Ors.

....Respondents

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Adarsh Jain, Advocate for the appellants.

Mr. Keshav Partap Singh, Advocate for respondents.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid two appeals arising out of two suits since common questions of law and facts are involved in the same.

In regular second appeal bearing RSA No.4982 of 2011 (for brevity “first appeal”, the plaintiffs-appellants have challenged the judgment and decree dated 13.9.2011 passed by learned Addl. District Judge, Palwal whereby the appeal filed by the defendants-respondents against the judgment and decree dated 26.3.2010 decreeing the suit, has been accepted.

While in another appeal bearing RSA No.2897 of 2015 (for brevity “second appeal”, the plaintiffs-appellants have assailed concurrent

findings of both the courts below whereby their suit has been dismissed vide judgment and decree dated 13.9.2011 passed by learned Addl. Civil Judge (Sr. Division), Palwal and the appeal met with the same fate by the lower Appellate Court vide judgment and decree dated 10.10.2014.

With regard to first appeal, the facts are that the plaintiffs filed suit for partition stating that they along with defendants were co-owners in possession of the land comprising in Khasra No.102, 105,154 and 163 as mentioned in the plaint. The suit was contested by the defendants on the premise that an oral family partition was effected in the year 1975 which had been reflected in the revenue record. The plea of partial partition as other khasra No.79 belonging to the co-sharers was not included in the aforesaid suit, was taken.

On the basis of material placed on record, the trial Court decreed the suit, however, the lower Appellate Court set aside the findings of the trial Court on the premise that the suit was bad for partial partition.

In second appeal, the plaintiffs filed suit for partition by metes and bounds stating that both the plaintiffs and the defendants were co-owners/co-sharers, which was contested by the defendants on the premise that the suit property had already been partitioned as reflected in the revenue record. The suit was dismissed by the trial Court and the findings were affirmed in appeal by the lower Appellate Court.

Learned counsel for the appellants submitted that the judgment of lower Appellate Court is not sustainable in the eyes of law, for, the lower Appellate Court has abdicated the fact that the khasra No.79 was although initially included in suit property but subsequently it was excluded being not joint between the parties. It was only thereafter that the second suit

bearing No.1230 of 2005 was filed and this fact was brought to the notice of the trial Court as well as lower Appellate Court. The written partition, if any, was effected at the back of the appellants but the lower Appellate Court has misread the evidence on record and failed to notice the fact that khasra No.79 was not made part of suit property.

Per contra, learned counsel for the respondents-defendants submitted that the family partition took place in the year 1975 and it was reflected in the revenue record, which weighed in the mind of the lower Appellate Court to form different opinion in the first appeal. He also submitted that the suit is bad for non-joinder of proper parties.

I have heard learned counsel for the parties and appraised the paper book.

Concededly, in the civil suit bearing No.644 of 2001 relating to first appeal pertaining to Khasra No.102,105,154 and 163 although initially khasra No.79 was included but the same was thereafter omitted for the reason that it belongs to other co-sharers in addition to the parties. This fact has not been noticed by the lower Appellate Court.

After going through the facts of the present case, I find that it is a fit case where the matter requires to be re-visited by the lower Appellate Court for proper adjudication as it has not been noticed in the impugned judgment that the appellant-plaintiff was not party to the proceedings relating to Khasra No.79.

Without commenting upon the merits of the case, lest it may prejudice the case of any parties, the present appeal is allowed. The judgment and decree dated 13.9.2011 of lower Appellate Court is set aside and the matter is remitted back to the lower Appellate Court to decide the

appeals together afresh. Liberty is granted to both the parties to move application in this regard before the concerned District Judge for decision of the appeals together by the lower Appellate Court in order to avoid confusion.

The parties through their counsel are directed to appear before the lower Appellate Court on 28.5.2018.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

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