

RSA No. 4920 of 2012 (O&M)

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

**RSA No. 4920 of 2012 (O&M)
Date of decision: 17.5.2018**

Rati Ram

... Appellant

Versus

Ram Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Pankaj Mehta, Advocate
for the appellant.

Dr. Parveen Hans, Advocate
for respondent Nos. 1 and 2.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiffs was decreed by the trial court, vide judgment and decree dated 20.2.2010. As even the appeal preferred against the said decree failed, and was dismissed on 5.6.2012, defendant No.1 is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs filed a suit for separate possession by way of partition in respect of a double storied house, comprised in khasra No. 449, khewat No. 1005, khatoni No. 1238 min, measuring 10 marla, situated at Dhana, Tehsil Hansi, District Hisar.

In the written statement filed on behalf of defendant No.1, it was pleaded that a family partition had already been effected between the parties and pursuant thereto, the house in question had fallen to the share of defendant No.1, and his son, i.e. Dharambir.

On a consideration of the matter in issue and the evidence on

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record, both the courts concurrently concluded that defendant-Rati Ram (DW2) as also his son Dharambir (DW1) conceded in their statements that the suit property was still shown to be joint in the revenue record. The plea set up by the defendant that oral partition had taken place between the parties 37-38 years ago, remained unproved for lack of cogent evidence. Even earlier, the defendant had moved an application for partition (Ex.P3) as regards other properties including the house in question and maintained that the suit properties were joint. Likewise in another suit (Ex.P4), titled as Rati Ram etc. Vs. Smt. Sunheri and others, decided on 4.9.1996, it was the case of the defendant that suit property was still joint between the parties, and had not been partitioned. Therefore, if, indeed, any such family partition was arrived at between the parties 35 years ago, the defendant would never have alleged or asserted the suit property to be still joint. Thus, the admission of the defendant, rather substantiated the claim of the plaintiffs. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show as to how, the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

17.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO