

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

RSA No.3406 of 2013 (O & M)  
Date of Decision:23.08.2018

Mam Chand and others

...Appellants

Versus

Bishamber Dayal and others

...Respondents

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

Present: Mr. Lokesh Sinhal, Advocate  
for the appellants.

Mr. Kulbhushan Sharma, Advocate  
for respondents No.1 to 5.

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

**CM-10361-C-2017**

Application is allowed

Appeal is restored to its original number and with the consent of learned counsel for the parties, arguments have been heard in the main appeal.

**Main case**

Legal heirs of plaintiff are in the regular second appeal against the judgment passed by the learned First Appellate Court, dismissing the suit for possession by way of partition reversing the judgment of the learned trial Court. Undisputed facts are that land measuring 10 marlas, which is part of *Abadi* of the village, was jointly purchased by four brothers namely Narain Singh (plaintiff), Bishamber Dayal, Tundal and late Sh. Devi Ram predecessor-in-interest of defendant Nos.3 to 5. Plaintiff- Narain Singh filed a suit for partition.

belongs to the plaintiff, however, it was pleaded that suit property has already been partitioned and everybody has constructed their respective houses.

Learned trial Court on appreciation of evidence found that there is no evidence of partition and, therefore, preliminary decree for partition was passed. Learned First Appellate Court reversed the judgment and decree passed by the learned trial Court on the ground that the plaintiff when appeared in the evidence, he in cross-examination admitted that there was a partition between the brothers and the aforesaid has been acted upon.

In the considered view of this Court, question of law which require determination is whether admission of a witness in cross-examination can be relied upon to decide a case unless such admission is specific, categoric and unequivocal.

It is well settled that admission of a party is best evidence, however, such admission, before it could be used for defeating the right, must be specific, categoric, unambiguous and unequivocal without possibility of two interpretations. This issue has been dealt with by this Court in RSA No. 434 of 2013 decided on 21.08.2016 “Sukhdev Singh and others vs. Amarjit Singh and others”.

In view thereof, question of law is answered in favour of appellant.

Learned counsel for the parties in open Court have read and re-read statement of plaintiff. There is no categoric admission of the plaintiff admitting partition between the parties. Learned counsel for the parties also admit that on this aspect there is a misreading of evidence of the plaintiff by

the learned First Appellate Court.

However, learned counsel for the respondents pointed out that in the written statement, defendants had taken a stand that after the partition, all the brothers have constructed their respective houses and the plaintiff-appellant has not led any evidence to disprove that fact.

In the considered opinion of this Court, once a positive plea has been pleaded by the defendants onus is on the defendants to prove that from the joint property, which was purchased vide registered sale deed dated 24.10.1969. Plaintiff has constructed house. If one reads carefully the cross-examination of the plaintiff, he has specifically stated that his house is constructed in Panchayat land and it is not part of the disputed property.

Still further, when defendant No.1 appeared, he made a statement that pursuant to the partition between the brothers, factum of partition was reported to the revenue authorities and an entry was made. It is admitted fact that no such evidence has been led.

In view thereof, this Court is left with no choice but to set aside the judgment passed by the learned First Appellate Court and restore the judgment of the learned trial Court.

Regular second appeal is allowed.

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

23.08.2018

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**(ANIL KSHETARPAL)**

**JUDGE**

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No