

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

**RSA No.126 of 2016 (O&M)
Date of Decision.05.12.2018**

Resham Singh and another

....Appellants

Vs

Mewa Singh and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Puneet Kumar Bansal, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-defendants have not been successful in defending the decretal of the suit at the instance of the respondent-plaintiff by the trial Court and affirmed in appeal.

The respondent-plaintiff stated that he being paternal uncle of the defendant was having ownership of 1/6th share whereas defendants No.1 to 3 along with their brother Angrej Singh were owners to the extent of 1/6th share in the land measuring 245 kanals 1 marla. The plaintiff had applied for partition of land before the Assistant Collector 1st Grade and the partition proceedings culminated into possession vide order dated 16.09.2004. After passing of the *sanad taksim*, plaintiff filed an application for physical verification of the land but the defendants threatened to obtain sanction of the mutation in their favour on the basis of some judgment and decree and compromise Ex.CX and it was found that they had actually forcibly taken the share of the plaintiff. It was alleged that defendant No.1 had obtained ex parte judgment and decree of more

than their share in joint khata from the Court on 16.4.2007.

Compromise Ex.CX was accepted by the Court on 18.12.2008.

The defendants opposed the suit and asserted that the suit was not maintainable as the only remedy for the plaintiff was to file appeal against the mutation and supported the judgment and decree in their favour.

Mr. Puneet Kumar Bansal, learned counsel appearing on behalf of the appellants submitted that judgments and decrees of the Courts below are not sustainable, as the property had already been partitioned and judgment and decree under challenge was confined to their share only. In the application submitted under Order 9 Rule 13 CPC for setting aside the ex parte decree, compromise Ex.CX was effected on the basis of which order of 2008 Ex.P7 was passed. As per the compromise, Resham Singh was found in possession of 44 kanals 17 marlas of land and as per his share, he gave 20 kanals 7 marlas to Sukha Singh and Naib Singh and remained owner of remaining land of 24 kanals 10 marlas.

I am afraid the aforementioned argument is not sustainable, as the revenue record established that out of 245 kanals 1 marla, about 141 kanal 10 marlas was subject to partition as on the remaining land, there was construction. The share of Resham Singh came to 40 kanals 17 marlas, therefore, he could not claim ownership in possession of 1/8th share. The ex parte judgment and decree conferring him the ownership of aforementioned area beyond his share could not have been passed and that too at the back of the other co-owner i.e. the plaintiff.

In view of the aforementioned observations, the concurrent finding of fact cannot be faulted with, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 05, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No