

RSA No.1878 of 2016 (O&M)

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

**RSA No.1878 of 2016 (O&M)
Date of decision : 29.08.2018**

Dharampal

... Appellant

Versus

Balkar Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prateek Sodhi, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.2 is aggrieved of the concurrent findings of fact and law, whereby the suit of the plaintiffs seeking possession by way of partition and rendition of accounts has been partly decreed by the trial Court and affirmed by the lower Appellate Court.

The aforementioned suit was instituted on the premise that Gurmit Kaur d/o S. Surjan Singh had a share as Surjan Singh died intestate. It was alleged that defendant No.1 had no right to alienate the property vide sale deed dated 27.05.2005, in favour of defendant No.2. Surjan Singh had left many properties referred to in the suit, but the trial Court had only partly decreed the suit qua property shown in para No.6(i) and rejected the suit on the ground that ownership of Surjan Singh viz-a-viz other properties, was not proved. The plaintiffs did not assail the findings, aforementioned, but the appeal preferred on behalf of the appellants-defendants has been dismissed.

Learned counsel appearing on behalf of the appellant-defendant

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No.2 submitted that the suit was not maintainable as appropriate courts fees had not been paid,. There was a categoric admission of the plaintiffs vis-a-viz dispossession from the suit property. Once the plaintiffs have not been successful in proving the ownership of the suit property, despite claiming right and title admitting the stand of the appellant-defendant No.2, the Court below should not have decreed the suit viz-a-viz the aforementioned property. The oral family settlement has not seen the light of the day, much less, not pleaded, therefore, it would be believed that the predecessor-in-interest of the plaintiff, namely, Gurmit Kaur, had relinquished the share, therefore, there is an abdication, thus, urges this Court for setting aside the concurrent findings of fact and law.

I have heard learned counsel for the appellant-defendant No.2, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sodhi, for, concededly the property as mentioned in para No.6(i) of plaint, has been proved to be in the ownership of Surjan Singh and in the absence of the documentary evidence, the plaintiffs being legal heirs of Gurmit Kaur daughter of Surjan Singh, had rightly been granted relief viz-a-viz property shown in para No.6(i) of the plaint as other properties had not been proved to be in the ownership of Surjan Singh. The appellant-defendant No.2 stated to have purchased the same very property. In such circumstances, I am of the view that status of appellant-defendant No.2 would be of a co-sharer. This is what the findings of the Courts below are. The plaintiffs did not file the appeal against the findings of the trial Court qua property as mentioned in para No.6(ii) to (v) of the plaint.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees of the Courts below,

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much less, the argument of Mr. Sodhi, is not able to cut an ice to bring the case within the realm of perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for determination.

The present regular second appeal is dismissed.

29.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No