

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

RSA No.2166 of 2016(O&M)

Date of decision: 30.7.2018

Prahlad

....Appellant

VERSUS

Tota Ram through LRs Billu @ Brij Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Bhardwaj, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of partition of half share of three-storeyed building residential house has been dismissed by the trial Court vide judgment and decree dated 29.01.2013 that came to be affirmed in appeal by the Appellate Court.

The appellant/plaintiff claimed himself to be co-owner of suit property to the extent of half share on the premise that late Gopal Saini had two sons namely Khima Nand and Har Lal and the plaintiff being son of Khima Nand and grandson of Gopal Saini is entitled to half share whereas the remaining half share would be ownership of successors in interest of Har Lal, on the basis of natural succession.

The plea of the defendants/respondents is that besides Khima Nand and Har Lal, Gopal Saini had another son namely Omkar and the said fact has been admitted by Prahlad (appellant) when he appeared in the witness box. Once the appellant has admitted that Gopal Saini had another

son namely Omkar, he cannot claim co-ownership in the suit property more than 1/3rd share on the basis of natural succession when admittedly the appellant has not claimed ownership to the extent of half share on the basis of either testamentary succession or a title deed. This apart, perusal of the judgment passed by the trial Court would reveal that against some of the defendants being co-owners in the suit property, the suit was dismissed under Order 9 Rule 2 of the Code of Civil Procedure, 1908. As per the settled position in law, suit for possession by way of partition of joint land cannot be decided in absence of all the co-owners being joined as a party either on the array of plaintiff(s) or defendant(s). In this view of the matter, I do not find an error much less perversity in the consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

JULY 30, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no