

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

**RSA No. 2543 of 2016 (O&M)**

**Date of decision : 05.09.2018**

Nawal Singh

....Appellant

V/s

Gajraj Singh (now deceased) thr. his LRs & ors.

....Respondents

**BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA**

Present: Mr. Rakesh Dhiman, Advocate for the appellant.

**RAJAN GUPTA J.**

Present appeal has been preferred by defendant-appellant impugning the judgments passed by two courts below. Learned counsel for the appellant submits that there is a complete misreading of evidence by the courts below. A substantial question of law arises whether courts below misread the evidence and thus arrived at a wrong conclusion. Interference is thus called for in second appeal.

I have heard learned counsel for the appellant.

A suit was instituted by plaintiff-respondents seeking a declaration to the effect that they were owners in possession of the suit property to the extent of 1/8<sup>th</sup> share alongwith preliminary decree of partition of suit property situated in Lal Dora of village Ajronda, alternatively praying for permanent injunction to restrained the defendant-appellant from changing the nature of suit property or selling any part thereof. It is averred that suit property was an ancestral property of joint Hindu family consisting

of plaintiffs, defendant their father and mother. After death of their parents, they inherited it in equal share to the extent of 1/8<sup>th</sup> share each. However, keeping in view the area of the suit property, it was necessary to get the suit property partitioned by way of metes and bounds but defendant-appellant was not ready for the same. Suit was resisted by defendant-appellant contending that plaintiffs had concealed the true facts and had no locus standi to file the suit. On appreciation of evidence, trial court decreed the suit in favour of plaintiffs declaring them owners in possession to the extent of 1/8<sup>th</sup> share each of suit property. A preliminary decree for partition was also passed accordingly in their favour and defendant was restrained from changing the nature of suit property and selling any part thereof till final partition by metes and bounds. Appeal was preferred against the said judgment and decree. However, defendant-appellant remain unsuccessful. Hence the present appeal.

It is borne out from the record that suit property was owned by Ram Phal. However, family partition has taken place in the year 1998 and the joint property was divided amongst the five sons of Ram Phal. Since Deep Chand was unmarried, he was not given any share and the house in question has fallen to the share of Nanak. After the death of Nanak, the suit property was partitioned among plaintiffs and defendant, being legal heirs. It appears that trial court on the basis of oral and documentary evidence on record held that plaintiffs were owners in possession to the extent of 1/8<sup>th</sup> share each of suit property. On perusal of judgments of both the courts below, I find no legal infirmity with the same. There is no ground to interfere with the findings arrived at by courts below. Substantial questions

already been adjudicated upon. Thus, instant appeal is without any merit and is dismissed.

As the main appeal has been dismissed on merits, no order needs to be passed in the accompanying applications.

September 05, 2018  
*Ajay*

(RAJAN GUPTA)  
JUDGE

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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |