

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

RSA No.1727 of 2015 (O&M)

Date of Order: 14th August, 2018

Moti Lal (since deceased) through LRs Shanti @ Shashi

..Appellants

Versus

Rajinder Parsad and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mani Ram Verma, Advocate,
for the appellants.

ANIL KSHETARPAL, J.

Defendant no.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing suit for possession by way of partition of the joint property.

It is undisputed that originally a larger property was purchased by Piyare Lal and Chiranji Lal sons of Sh.Het Ram and Hargobind son of Sh. Ramji Lal. These three owners thereafter partitioned the property vide registered partnership deed dated 22.02.1960. Since by that time Chiranji Lal had died, therefore, 1/3rd share of the property fell to the share of his sons, namely, Ram Kumar, Radha Krishan ad Roshan Lal.

Plaintiff, who is son of Piyare Lal claims that Ram Kumar out of love and affection bequeathed his 1/3rd share out of the property received by the three brothers in partition deed dated 22.02.960 in his favour, whereas defendant no.1 claims that he has purchased the property from legal heirs of Roshan Lal vide sale deed dated 19.06.1995 (registered on

21.06.1995). It is further claimed by the defendant-appellant that a suit for permanent injunction was filed which was decreed in his favour on 19.01.2002.

Both the courts after appreciating the evidence available on the file, decreed the suit by passing a preliminary decree for partition.

This court has heard learned counsel for the appellant and with his able assistance gone through the judgments passed by the courts below and the record which has been summoned.

Learned counsel appearing for the appellant has submitted that the suit filed seeking partition is with respect to the property described as House No.6926-A. He submitted that House No.6926-A is entirely different property and therefore, the suit for partition was liable to be dismissed. He further submitted that the plaintiff has succeeded to the property on the basis of Will dated 20.12.1995, which is with respect to property No.6926-A only.

This court has carefully considered the argument of learned counsel for the appellant.

It has been noticed by the first appellate court that two different properties were purchased by Hargobind, Piyare Lal and Chiranji Lal. Both the properties were partitioned vide registered deed of partition dated 22.02.1960. Along with the deed of partition, a map Ex.PW11/6 was prepared and annexed. Translation of the map is Ex.PW11/D. It is proved from the examination of the aforesaid map that northern side of the haveli was allotted to Piyare Lal and the same was divided into two parts. Whereas in the deed of partition, portion shown in yellow colour of the haveli was allotted to Hargobind, whereas part shown in green colour was

allotted to the heirs of Chiranji Lal i.e. Roshan Lal, Ram Kumar and Radha Krishan. On examination of the house tax record, it is proved that the portion which fell to the share of Roshan Lal, Ram Kumar and Radha Krishan was allocated house tax No.6926-A.

Still further record of the partition which took place in the year 1960 has been produced on file and there is no doubt about the portion which fell to the share of Radha Krishan, Ram Kumar and Roshan Lal, heirs of Chiranji Lal. The courts have examined the lay out plan prepared at the time of partition in the year 1960 and identity of the property which was joint is not in dispute. This court has also compared the map attached with the deed of partition in the year 1960 and the lay out plan produced by the plaintiff while filing the suit. Both are identical.

Keeping in view the aforesaid facts, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below and there is no vagueness or dispute about the identity, location and extent of property.

The regular second appeal is dismissed.

14th August, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No