

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

RSA No.4609 of 2016(O&M)
Date of decision: 25.10.2018

Budh Singh

.....Appellant

VERSUS

Kulwinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.S. Dhaliwal, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction filed by the appellant and his co-plaintiff was dismissed by the trial Court vide judgment and decree dated 19.09.2015 that came to be affirmed in appeals separately filed by both the plaintiffs.

The appellant and his co-plaintiff sought declaration that Budh Singh – plaintiff No.1 is owner in possession of 7 kanal 4 marlas, plaintiff No.2 to the tune of 7 kanal 5 marlas, defendant No.1 and 2 to the extent of 7 kanal 5 marlas each and defendant No.3 1½ marlas by contending that partition deed dated 24.11.2007 is forged, fabricated, unregistered document which has no value in the eye of law. It is averred that the partition deed has been prepared by defendants No.1 and 2 by taking advantage of illiteracy of plaintiffs. Mutation No.22590 sanctioned on the basis of partition deed is liable to be ignored. They have prayed that defendants No.1 and 2 be restrained from alienating, mortgaging or raising construction over the suit land.

Defendants No.1 and 2 contested the suit on the premise that father of plaintiffs and defendants No.1 and 2 was owner in possession of 145 kanal 13 marlas of land. There was an oral partition on the basis whereof co-owners took possession of their respective shares and in this regard entry was made with the Patwari but details of land could not be mentioned by him. Partition deed was executed on 24.11.2007 with consent of the plaintiffs. All other material averments of the plaint have been denied with a prayer for dismissal of suit.

Counsel for the appellant would urge that as the contesting defendants have failed to adduce any evidence with regard to oral partition between the parties, the partition deed is wrongly relied upon by the Courts to reject claim of the plaintiffs whereby plaintiff No.1 has suffered loss of land measuring 17 marlas and plaintiff No.2 to the extent of 14 marlas out of their share in total land measuring 29 kanal 1 marla. It is further argued that the partition deed has been prepared by defendants No.1 and 2 by taking advantage of illiteracy of the plaintiffs who are purported to have affixed their thumb impressions on the same.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned but find that the appeal sans merit and deserves to be dismissed.

The plaintiffs including the appellant have not denied their thumb impressions on the partition deed prepared in the year 2007 recording the factum of oral/family partition that took place in the year 1987. As the plaintiffs have not denied their thumb impressions on the partition deed, law imposes an obligation upon them to prove that the document in question is the result of forgery/fabrication to be established

like a criminal charge. Counsel for the appellant has failed to point out any materials on record to establish that findings recorded by the Courts are either the result of misreading of evidence or failure to take into consideration evidence which has material bearing on decision qua validity and genuineness of partition deed dated 24.11.2007. There is nothing on record suggestive of the fact that the appellant initiated any criminal proceedings against contesting defendants with regard to their having manufactured the partition deed by taking advantage of their illiteracy. No sooner the plaintiffs failed to substantiate their plea to successfully assail partition deed in the form of memo of partition recording the factum of oral partition between the parties, contents of partition deed itself are an evidence of oral family partition between the parties before the partition deed was reduced into writing. This apart, as per the settled position in law the plaintiff has to stand on his own legs and cannot derive strength from weakness of defence. As the plaintiffs have failed to establish their case seeking setting aside of the partition deed, they have rightly been non-suited by the Courts.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

OCTOBER 25, 2018

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no