

RSA-499-2016 (O&M)

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

**RSA-499-2016 (O&M)
Date of decision : 04.12.2018**

Gian Singh

... Appellant

Versus

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sham Lal Bhalla, Advocate for the applicant/appellant.

AMIT RAWAL, J.

CM-17775-C-2018

Prayer in the application under Order 41 Rule 19 read with Section 151 of the Code of Civil Procedure is for restoration of the aforementioned appeal.

For the reasons stated in the application, the appeal is ordered to be restored to its original number i.e. RSA-499-2016.

CM stands disposed of.

RSA-499-2016

The appellant-plaintiff has not been successful in claiming the separate possession by way of partition by metes and bounds in respect of property measuring 245.65 sq. yds. i.e. 8 marlas of Gair Mumkin, abadi.

It was alleged that the plaintiff along with the defendants were the legal representatives of Isher Singh. On his demise, the aforementioned property was liable to be partitioned amongst the co-owners.

The defendant No.1 opposed the suit by taking the plea of partial partition and absence of cause of action, whereas defendant Nos.2 to 5 stated that property was previously owned by Hajura Singh son of Sahel

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Singh. Hajura Singh filed a suit against Isher Singh, which was decreed vide judgment and decree dated 30.04.1982 and in view of that decree, Isher Singh did not have any concern with the suit property.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the entries in the revenue record reflected the ownership of Isher Singh and on his demise, the property was mutated in favour of all the legal heirs. In such circumstances, the Courts below could not have formed an opinion that Isher Singh was not the owner of the property as the judgment and decree was not reflected in the revenue record.

I am afraid the aforementioned argument is not sustainable, for, as per Ex.D4 and Ex.D-5, judgment and decree rendered in the civil suit aforementioned, Isher Singh was not having any right, title and interest in the suit property and in the absence of same, partition on the basis of the title derived from the estate of Isher Singh, could not have been granted.

In this view of the matter, I do not subscribe to the submissions of Mr. Bhalla, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

04.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**