

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5106 of 2016 (O&M)

Date of decision: 19.07.2018

Chaman Lal and others

..... Appellants

Versus

Rajo (since deceased) through LRs
Gurdev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Naveen Bawa, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-13261-C-2016

Application is allowed and the delay is condoned.

Main Case

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff-Smt. Rajo wife of Sardha Ram filed a suit for declaration claiming that Mohinder Ram son of Ram Chand had left the house about 20 years back and he has not been heard for more than 7 years, therefore, he should be declared as civil dead and hence, the plaintiff and defendants are entitled to succeed to the property being class II heirs.

Both the Courts after examining the evidence have found that Mohinder Ram is not heard for the last 20 years and therefore, he is presumed to be civil dead. The Courts have passed a decree for declaration and held that the parties are in joint possession as the plaintiffs are entitled

to half share whereas remaining half share falls in the hands of the defendants. The aforesaid finding of the learned trial Court has been affirmed after re-appreciation of evidence by the learned First Appellate Court.

Learned counsel for the appellants has vehemently argued that the plaintiffs are not proved to be in possession and therefore, decree for joint possession could not be passed. He has further submitted that the decree for permanent injunction also could not be passed.

Once both the parties are co-owners being joint owners, each co-owner is deemed to be in possession of every part of the land. Still further, the Courts below have only passed a decree for injunction restraining the defendants from selling more than their share.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

19.07.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No