

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA-5472-2016 (O&M)

Date of decision: August 28, 2018

Joginder Singh

...Appellant

Versus

Jaswant Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. S.S. Virk, Advocate for the appellant.

Rajan Gupta, J.

Present appeal has been preferred to impugn findings of District Judge, Panipat, on the ground that same are perverse and based on misappreciation of evidence.

Plaintiff/respondent No.1 and Harbans Kaur (deceased) through her LRs filed a suit for possession by way of partition and for permanent injunction against the defendant/appellant and respondent No.2, with the averments that one Variam Singh son of Wadhawa Singh had purchased plot No.425-R, Model Town, Panipat in an open auction, which is referred here as 425-L. In the year 1958, Dalip Singh constructed a house over portion ABGEFH and shifted therein alongwith his family. He also constructed western, southern and eastern boundary walls and gave the share for northern boundary wall, which was already existing at that time. Some portion of 4 feet was left vacant for going to back portion. In the year 1962, said property was partitioned. Variam

Singh gave portion marked by letters BGEF to his son, namely, Sujan Singh and portion marked by letters ABCDEF alongwith 4 feet passage to his son Dalip (father of plaintiff No.1) and defendants and husband of plaintiff No.2. In this way, Dalip Singh was in physical possession of the property marked with letters ABCDEF alongwith 4 feet passage. Later on, in the years 1974 and 1994, some more constructions were also made. It is alleged that Dalip Singh died intestate on 21.11.1998, leaving behind the parties as his legal heirs. Plaintiffs have 1/4th share each in the suit property. Defendants threatened to raise construction over the property in question as also to alienate the same. Suit was resisted by the defendants. Defendant No.1 in his written statement averred that plaintiffs were not owners of the portion marked by letters ABCDEF and the suit has been filed in order to benefit defendant No.2 and other suits titled as “Joginder Singh Vs. M/s Dalip Singh and others” and “Satinder Singh Vs. Joginder Singh” were also pending in the civil court at Panipat. A criminal complaint titled as “Joginder Singh Vs. Satinder Singh and others” was also pending in the court of Addl. Chief Judicial Magistrate, Panipat. Other averments made in the plaint were denied. Defendant No.2 filed admitted written statement. After hearing both the parties and perusing oral as well as documentary evidence, the trial court dismissed the suit. It observed that plaintiffs had failed to adduce any evidence to prove that the property was partitioned, as alleged in the plaint. Further, as per the Will, the house No.425-R, Model Town, Panipat, half portion was given to Gurmej Singh, Gurmukh Singh, Surjit Singh, Sardar Singh and Avtar Singh and vide agreement (Ex.D1), other portion was also sold

by the other five sons to Joginder Singh. Aggrieved, plaintiff Jaswant Kaur filed appeal. Vide judgment and decree dated 31.5.2016, District Judge, Panipat has set-aside the judgment/decree passed by the trial court and decreed the suit of plaintiffs regarding partition of their 1/4th share each in the property marked by letters BFXY in site plan Ex.P1. It observed that plaintiffs No.1 and 3 being heirs of Dalip Singh, after death of their parents, are now joint owners alongwith defendants in the property of their father Dalip Singh to the extent of 1/4th share each.

I find no infirmity with the findings arrived at by the District Judge. Only plea raised before this court is that judgment of the first appellate court is based on misappreciation of evidence as well as law. I find no substance in this plea. No other substantial question of law has been urged.

Dismissed.

(RAJAN GUPTA)
JUDGE

August 28, 2018
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No