

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

104

RSA-4463-2015 (O&M)

Date of Decision : 06.03.2018

Braham Parkash

..... Appellant

Versus

Mangtu and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Amit Jain, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for the respondent No.1.

Mr. S.K. Tripathi, Advocate
for respondent No.2.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments and decrees of the courts below whereby a preliminary decree for partition has been passed on a suit filed by the respondent No.1.

It is not disputed that the parties belong to the same family and were joint at one point of time. It is also not disputed that the agricultural land stood partitioned between them. It is also not disputed that the appellant has 1/2 share while the two respondents have 1/4th share each in the property. The appellant claimed an oral partition and both the courts below held that he was not able to prove it.

Today the counsel for the appellant has argued that in his cross-examination the respondent No.1 admitted the site plan Ex.DW1/A

and consequently it must be held that he admitted the earlier partition. Counsel for the appellant has taken me through the testimony of the respondent No.1(PW-1). Having gone through the same, I regret my inability to agree with the contention of the counsel for the appellant. The respondent No.1 has agreed that the plan as drafted shows the position of the land and the buildings thereon but in my opinion it cannot be said that he admitted that the land was partitioned. Counsel for the appellant has further argued that the courts below were unnecessarily influenced by the fact that the family partition was not reflected in the revenue record and has cited some judgments to buttress his contention that it is not necessary that a family settlement has to be entered in the revenue record. To my mind even if this argument is accepted, it would not carry the case of the appellant further. It cannot be lost sight of that once the appellant admitted a prior jointness, the onus shifted upon him to prove partition and apart from his oral assertion there is no other evidence on the record.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 06, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No