

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

**RSA No.6979 of 2016 (O&M)
Date of Decision.30.10.2018**

Pal Singh
Vs
....Appellant

Balwinder Singh and others
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dheeraj Mahajan, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.18070-C of 2016

For the reasons stated in the application, delay of 17 days
in re-filing the appeal is condoned.

Application is allowed.

RSA No.6979 of 2016

The appellant-defendant No.1 has not been successful in
defending the concurrent finding of fact whereby the respondent-
plaintiff sought partition of the land measuring 4 kanals 14 marlas
jointly possessed by the parties situated in village Alawalpur, Tehsil
and District Gurdaspur.

The appellant-defendant No.1 contested the suit on two
counts namely (i) non maintainability and (ii) private partition.

The trial Court on the preponderance of evidence
decreed the suit. In appeal, the lower Appellate Court remanded the
matter back for taking a decision afresh by framing issues 1-A to 1-D.
The trial Court after considering the aforementioned issues decreed
the suit, which was also affirmed by the lower Appellate Court.

Mr. Dheeraj Mahajan, learned counsel appearing on behalf of the appellant submitted that both the Courts below had not been able to give any specific finding on the aforementioned issues, therefore, there is abdication. The witnesses in the injunction suit filed by the plaintiffs admitted that all the parties to the *lis* had arrived at a family partition, much less, in respect of land not disclosed in the suit pending proceedings before the revenue court. There was a categorical admission with regard to other joint property, therefore, the suit in such circumstances was required to be dismissed on account of partial partition. The appellant is already in possession of the property by raising the construction so is the position of the plaintiffs. Possession, which cannot be interfered with under the garb of preliminary decree.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force in the submissions of Mr. Mahajan, for, the private family arrangement or partition was not reflected in the revenue record, thus, jointness amongst the parties to the *lis* existed. Oral testimony of the witnesses would not have brought the suit under the guise of non-maintainability in the absence of documentary proof with regard to partition of the property. Had the onus been discharged, perhaps there was an occasion for the Courts to deal with the legal proposition and the tenor and mode of the finding would have been different. In the absence of any direct and cogent evidence, their possession will be adjudicated in proceedings for preparation of the final decree where parties to the *lis* would be able to protect their possession and

if found in possession of valuable chunk by buying out each other's share.

In view of the aforementioned facts, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 30, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No