

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

**RSA No. 1639 of 2017 (O&M)
Date of decision : 02.11.2018**

Inderjeet Singh Bhatia

.....Appellant

Versus

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.K. Aurora, Advocate
for the petitioner.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff has not been successful in claiming partition by way of separate possession regarding the estate of common ancestor Gurbachan Singh, who died on 16.12.1982. It was alleged that he died intestate, therefore, the property devolved upon all legal heirs i.e. appellant-plaintiff and defendants, as per natural succession. The defendants, who had been in occupation of the suit property did not admit the claim of appellant-plaintiff despite repeated requests, resulting into filing of the suit. The defendants set up an oral family settlement dated 12.05.1988 establishing the ownership of defendant No.2.

Plaintiff appeared himself as PW1, Daljit Singh as PW2 who did not step into witness box and Mukesh Oberoi Draftsman as PW-3 who prepared the site plan. Trial court dismissed the suit on the basis of the evidence. The appellate Court also dismissed the appeal.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that there is no limitation to claim partition unless the other co-sharer prove adverse possession. The revenue record reflected the jointness in the property of each & every portion of the house and it would be deemed to be in possession of the other co-sharer even if in conscious possession. The finding of the Courts below non-suiting the appellant that the appellants/plaintiff had approached belatedly after 27 years from the date of death of Gurbachan Singh.

I am afraid that the aforementioned argument raised by learned counsel appearing for the appellant/plaintiff is not sustainable as through out the plaintiff acquiesced act of animus of the co-owners. Even renovation was done 20 years back. No objection, any finger raised or pointed out. Doctrine of acquiescence in such circumstances would definitely apply as the common ancestor died in 1982 whereas the suit was filed in 2009. No sane person having a share in the property remain silent for such a long period. All these factors have been taken care of by both the Courts below.

In view of the above the present appeal is dismissed.

(AMIT RAWAL)
JUDGE

02.11.2018

tripti/dkp

Whether speaking/reasoned	:	Yes
Whether reportable	:	No