

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

RSA No.1958 of 2017 (O&M)

Date of decision:24.05.2018

Dharam Singh and another

... Appellants

Vs.

Randhir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naresh Kaushal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellants-defendants No.3 and 4 are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit preferred by the respondent-plaintiffs seeking partition of the suit property, preliminary decree has been drawn.

Mr. Naresh Kaushal, learned counsel appearing on behalf of the appellants-defendants No.3 and 4 submits that both the Courts below have misconstrued and misinterpreted the oral and documentary evidence brought on record, for, the plaintiffs had already parted with the share in khasra No.75 and ordered to cover the alleged deficient area, stake had laid down to khasra no.74 belonging to the defendants. Both the khasra numbers are separate properties and in separate possession of the respective parties. The sale deed was of 20.01.1976, whereas, the present suit was filed on 26.07.2011 after about 35 years. Amar Singh, defendant No.1 and Nasib

Singh, deceased predecessor in interest of defendant No.2 to 4 were owner of 2/3 share of land comprised in khasra no.75(1-0) in equal share and this fact was in the knowledge of the plaintiff No.2. Since his son was co-sharer to the extent of 1/3 share in the aforementioned khasra number, therefore, determination of the share undertaken by the Courts below is not correct interpretation and appreciation of the revenue record, resulting into abdication and perversity.

I have heard the learned counsel for the appellants-defendants No.3 and 4, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Kaushal. It is appreciable that the trial Court had undertaken the task in determining the share in the following manner:-

Area of khasra number 74 is 1K 1M i.e. 21M

Area of khasra number 75is 1K 0M i.e. 20M

Total area in joint land : 21+20=41M

Original Shares:

<i>Name</i>	<i>Original share in khasra no.74(1-1)</i>	<i>Original share in khasra no.75(1-1)</i>
Plaintiff no.1	1/6	1/6
Performa defendant no.5	1/6	1/6
Defendant no.1	2/3	2/3
Nasib Singh, predecessor in interest of defendants no.2 to 4	2/3	2/3

It is settled law that a co-owner has interest in the whole property and also in every parcel of it. The appellants have not been able to

belie or establish on record that the documentary evidence of the respondent-plaintiffs was not correct. It is in this aspect of the matter, the Court below had no occasion but to draw strong presumption as per the provisions of Section 44 of Punjab Land Revenue Act. The findings of facts and law had been arrived at on appreciation of the evidence. It is not the case of the defendants that there were incorrect entries in the revenue record. Had it been so, the Court below could have relegated the parties to establish the title but in the absence of such plea, I am of the view that grouse of the appellants-defendants No.3 and 4 is nothing but an act of greed.

Thus, the arguments of Mr. Kaushal, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form a different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 24, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No