

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5567 of 2014 (O&M)

Date of Decision: April 05, 2018

Nirmal Singh @ Nirmail Singh

...Appellant

Versus

Naib Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.G.S.Sullar, Advocate,
for the appellant.

Mr.Sanjay Jain, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the concurrent findings, whereby in a suit for separate possession by way of partition by metes and bounds, a preliminary decree has been passed.

Respondent-plaintiff instituted the suit claiming separate possession of ½ share of the property being the decedent of Shamsheer Singh on the basis of the natural succession.

The aforementioned suit was contested by the appellant-defendant on the ground that there is already a partition amongst the parties and in lieu thereof, the defendant had paid a sum of ₹25,000/-.

The trial Court, on the basis of the aforementioned pleadings, framed the following issues:-

“1. Whether the plaintiff is entitled for the decree of separate possession, as prayed for? OPP

2. *Whether the suit of the plaintiff is not maintainable, as prayed for? OPP*
3. *Whether this court has got no jurisdiction to try and entertain the present suit? OPD*
4. *Whether plaintiff has no cause of action to file the present suit? OPD*
5. *Whether the plaintiff has concealed the true and material facts from the court? OPD*
6. *Whether the plaintiff has not come to the court with clean hands? OPD*
7. *Whether no proper court fee has been affixed on the plaint? OPD*
8. *Relief.”*

Respondent-plaintiff examined himself as PW-1, who proved site plan Ex.P1, PW-2 Lakhmira Singh and PW-3 Ram Singh and brought on record Ex.P2 DDR. On the other hand, defendant examined himself as DW-1, Pritam Kaur, mother of the parties to the lis as DW-2 and Labh Singh DW-3, other brother.

The Courts below, on the basis of the evidence, decreed the suit by drawing a preliminary decree and appeal preferred before the Lower Appellate Court also met with the same fate.

Mr.G.S.Sullar, learned counsel for the appellant-defendant submitted that the respondent-plaintiff had already left the area and was not having the right of co-sharer on the basis of the settlement and receipt of ₹25,000/-. This fact has totally been ignored despite the fact that it had been proved on record and, thus, urged this Court for setting-aside the concurrent findings.

Mr.Sanjay Jain, learned counsel for the respondent-plaintiff submitted that the appellant-defendant has miserably failed to discharge the

onus with regard to payment of ₹25,000/- or any settlement. The status of a co-sharer is of every inch of land unless and until is set out as an ouster and, thus, urged this Court for affirming the concurrent findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant, for, the appellant-defendant has miserably failed to prove the alleged settlement or payment of ₹25,000/-. Concededly, the parties to the lis are brothers and co-sharers. The remedy chosen by the respondent-plaintiff is the correct one. The findings of the Courts below drawing a preliminary decree in the absence of any direct or cogent evidence with regard to payment of ₹25,000/- by the appellant-defendant is correct appreciation of law.

For the reasons stated above, no ground for interference in the concurrent findings is made out, much less any substantial question of law arises for determination. Resultantly, the appeal stands dismissed.

April 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No