

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.292 of 2017 (O&M)

Date of Decision: November 01, 2018

Baldev Singh

...Appellant

Versus

Radha Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant No.1 has assailed the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiffs seeking separate possession by way of partition of land measuring two kanals bearing Khasra No.353, Khatauni No.544 and Khasra No.168, which was dismissed by the trial Court on account of partial partition, has been decreed. Plaintiffs claimed the aforementioned relief on the premise that they along with defendants are joint owners in possession and do not want to retain joint possession thus claimed the separate possession by way of partition.

Defendants opposed the aforementioned suit on the ground that the suit was hit by partial partition as various other khasra numbers, i.e., 18/26, 22/28, 36//28/1 had not been included. Jamabandi Ex.DX/1 for the year 2008-09 reflected the aforementioned fact.

The trial Court, on the preponderance of the evidence, rightly

dismissed the suit, but the Lower Appellate Court has assigned erroneous reasons in decreeing the suit. Law of partial partition is no longer *res integra* and, therefore, urged this Court for interference.

I am afraid, the argument of the learned counsel for the appellant-defendant No.1 is not sustainable as concededly the khasra numbers, referred to above and reflected in the jamabandi Ex.DX/1, are not in joint ownership of the appellant-defendant, but there are certain other co-sharers and, therefore, rightly the Lower Appellate Court has set-aside the findings of the trial Court as the suit was not hit by partial partition. It would be in the independent proceedings by joining the co-sharers.

Other argument raised during the course of hearing is that the site plan was not correct. I am afraid, the argument is also not worth appreciation at this stage, for, the preliminary decree is only for the purpose of determination of the share. Area in possession, value and location is in the domain of the Court while entertaining the application for final decree.

For the reasons stated above, no ground for interference in the findings under challenge is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No