

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

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RSA No.2473 of 2018 (O&M)

Date of decision: 25.07.2018

Kiran Kumar

... Appellant

Versus

Dharampal and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Agam Jund Mullanpur, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration that plaintiff/respondent is the co-owner in joint possession to the extent of 3-1/2 share in the shop, detailed in head-note of the plaint and for separate possession by way of partition of the said shop with consequential relief of permanent injunction was decreed by the trial Court vide judgment and decree dated 14.05.2015, that came to be affirmed in appeal on 10.05.2017 by the Additional District Judge, Ludhiana.

The sole submission made by counsel for the appellant/defendant No.1 is that suit filed by the respondent/plaintiff is not maintainable as earlier a suit for partition was filed by another co-owner that finds reference in the plaint filed by Sh. Dharampal.

The Court in appeal, in para 15 of the judgment, has noticed that LR's of Des Raj filed a suit for partition regarding the shop in dispute and preliminary decree was passed on 02.05.2000 wherein all the successors in interest of Sh. Des Raj were held co-owner to the extent of

1/9th share each. None of the parties filed an application for passing of final decree. It is also an admitted position in the case that the respondent/plaintiff was not plaintiff in the said case rather was arrayed as one of the defendants. If the successful decree holders in the earlier partition suit did not file an application for final decree, the same would not debar the respondent/plaintiff seeking partition of the joint property or to say that the property cannot be allowed to continue to be joint for all the times to come for the aforesaid reason. A plain reading of the provisions of Section 11 of the Code of Civil Procedure (in short 'the Code') makes it evident that the instant suit filed by the respondent/plaintiff cannot be said to be non-maintainable being barred by principle of resjudicata when otherwise the appellant/defendant has not raised the plea of suit being barred by resjudicata. In this view of the matter, consistent findings recorded by the Courts do not suffer from an error much less perversity, warranting intervention.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

No order as to costs.

25.07.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No