

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

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RSA No.320 of 2017 (O & M)
Date of Decision:16.03.2018

Vijay Kumar

...Appellant

Versus

Narotam Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jhanji, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Defendant No.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit filed by the plaintiffs for separate possession by way of partition.

Defendant did not dispute that the plaintiffs are co-owners but pleaded that there was an oral partition between the parties and pursuant to the aforesaid oral partition, parties had come into separate possession of the portions. Both the Courts on appreciation of evidence have found that the oral partition is not proved on file.

Learned counsel for the appellant has drawn attention of the Court to Para 5 of the written statement, wherein the defendant had pleaded oral partition. Learned counsel has further drawn attention of the Court to Para 5 of the replication filed by the plaintiffs, wherein it is recorded that assertions made in Para 5 of the written statement are wrong and denied. Learned counsel has submitted that in the absence of specific denial, the assertion made in the written statement should be deemed to have been

admitted.

This Court has considered the argument. Replication as such is not required to be in detail. The replication is filed only with a view to reply to the preliminary objections and counter the additional facts if any pleaded and to reiterate what has been stated in the plaint. In Para 5 of the replication, the plaintiffs have specifically asserted that no family partition has ever been effected as alleged. Plaintiffs have further stated that remaining assertions made in Para 5 of the written statement is a concocted story.

In view of the aforesaid, it will not be possible to hold that the assertions made in Para 5 of the written statement have not been properly replied.

Both the Courts have already appreciated the evidence available on the file and recorded a concurrent finding, which is not found to be erroneous.

In view thereof, there is no scope for interference.

Regular second appeal is dismissed.

16.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No