

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-349-2017 (O&M)
Date of Decision: 09.10.2018

Ram Kumar

--Appellant

Versus

Anoop Singh & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. J.S. Dahiya, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff-Ram Kumar filed a suit for separate possession by way of partition asserting that he had purchased 1/20 share in the suit land measuring 8 marla 6 sarsai from Raju son of Ram Singh vide registered sale deed dated 24.5.2005 for a sale consideration of Rs.52,000/- and as such, became co-owner in joint family property. Suit was dismissed by the Trial Court on 22.1.2014. Civil Appeal preferred by the plaintiff has met the same fate vide judgement dated 10.5.2016 passed by the learned Additional District Judge, Panipat.

Resultantly, plaintiff-appellant is in second appeal before this Court.

Counsel for the appellant vehemently argued that the courts below have failed to appreciate that no proceedings under Section 111 of the Punjab Land Revenue Act for partition of the land had ever taken place. Further contended that the appellant has been non-suited erroneously by the courts below by accepting the stand of the defendants as regards an oral partition having taken place as no such partition stands reflected in the revenue records.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal.

It is a case wherein contesting defendants had filed separate written statements and had taken a plea that certain co-sharers have already constructed their residential houses over part of the suit property. Further stand was that the defendants are owners in possession of specific portions of the suit land and which was the outcome of an oral partition. Furthermore, even plaintiff while appearing in the witness box as PW-1 admitted in his cross-examination that prior to purchasing the land measuring 8 marla 6 sarsai he had seen the suit land and there existed house of Anoop in the East, house of Daya Nand in West, house of Mane in North and house of Ram Mehar in the South. It was further admitted that the suit property is surrounded by houses from all sides. There was even an admission with regard to certain co-sharers having constructed the houses. Even PW-2 Dilawar admitted in the cross-examination that the co-sharers had constructed houses over the land pertaining to their share/ownership. Based on due appreciation of evidence a view has been taken by the courts below that plots already stand carved out in the erstwhile joint holding. That apart, plaintiff did not place on file the sale deed dated 24.5.2005 executed in his favour and which would have duly reflected the specific portion as also specific dimensions of the suit property that had been sold to him.

In a case where co-sharers admit separation of their shares and possession/construction over respective shares, the presumption of oral partition would arise.

No patent infirmity or perversity is found in the judgements passed by the courts below, whereby the suit for separate possession by way of partition has been declined.

No merit, appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.10.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No