

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

105

CM-15870-C-2018 in/and
RSA-4269-2017 (O&M)
Date of Decision : 1.11.2018

Rajinder Kumar @ Ashok Kumar and anotherAppellants

vs.

Banso and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sandeep Arora, Advocate for the applicants-appellants.

AJAY TEWARI, J. (Oral)

CM-15870-C-2018

This is an application for restoration of the main appeal.

For the reasons recorded in the application the same is allowed
and the appeal is restored to its original number.

Main Case

This appeal has been filed against the judgment of lower
Appellate Court partly decreeing the suit filed by the respondents by reversing
the judgment of the trial Court where the suit of the respondent was dismissed.

. The respondents had claimed 1/8th share in two properties; one
in a piece of land measuring 10 Marlas situated at Jalowal Abadi, Buta Mandi
(basti sheikh) Jalandhar and another in house measuring 10 Marlas situated in
the same area. The case of the respondents was that the property was owned
by their father who had left behind eight legal representatives and
consequently, they were entitled to inherit 1/8th share.

Both the Courts below held that as regards the house in dispute

there was no proof which was given by the respondents that the property was owned by their father and dismissed the suit. As regards the land in dispute the respondents had placed on record Jamabandis i.e. Exhibit P-4 and P-5 which showed them to be shareholders to the extent of 1/8th share. On the other hand, the case of the appellant was that he was the owner of that land but he led no evidence. The Trial Court held that by merely producing the Jamabandis on record the respondents had not proved the ownership and consequently, dismissed their claim for land also. However, the lower Appellate Court held that the Jamabandis carried a presumption and, since the appellant was not able to rebut the presumption, the respondents have been able to establish preponderance of probability however slim and consequently, decreed the suit qua the land. Even before me, the only argument raised by the learned counsel is that the respondents did not prove how they had become 1/8th owner because the mutation was never placed on record. In my opinion, the argument is flawed. Once a Jamabandi was on record it carried a presumption however weak and even a weak presumption is not rebutted the preponderance of probability will tilt in favour of a person in whose favour the presumption lies.

In the circumstances, the appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**1.11.2018
anuradha**

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No