

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

RSA 5853 of 2017 (O&M)
Date of decision: 16.10.2018

Krishan Lal

.....Appellant

versus

Nasib Chand and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Varun Sharma, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against judgment and decree dated 15.03.2017 passed by the Additional District Judge, Jalandhar whereby appeal filed by Nasib Chand, defendant No. 1 against judgment and decree dated 27.09.2016 of the trial Court was accepted, judgment and decree of the trial Court were set aside and suit filed by the plaintiff/appellant seeking separate possession by way of partition and also for permanent injunction qua house in question bearing No. W.A.21, Ali Mohalla, Kucha Baghwan, Sheikha Bazar, Jalandhar was dismissed.

The appellant/plaintiff claimed 1/6th share in the suit property on the basis of natural succession to Harbans Lal, stated to be erstwhile owner of the house in question, succeeded by the appellant and defendants No. 1 to 5 to the extent of 1/6th share each.

The trial Court, in view of findings recorded in para 17 of the judgment, has decreed the suit by relying upon site plan Ex.P1, house tax

assessment for the year 2012-13, Ex P2 and death certificate of Harbans Lal, Ex.P3. The Court also took notice of the fact that defendant No. 1 had admitted in the written statement that the plaintiff and defendants are sons of Harbans Lal. Another factor taken into consideration by the trial Court is that the defendants have not placed on record any document in order to prove ownership of Nasib Chand-defendant No. 1 who admitted in his cross examination that he has not moved any application to Municipal Corporation, Jalandhar to register the property in his name. However, the appellate Court has set aside the judgment and decree passed by the trial Court by holding that the appellant/plaintiff has failed to adduce satisfactory much less cogent evidence to prove that the suit house was previously owned by Shri Harbans Lal and he is entitle to 1/6th share in the same on the basis of natural succession.

Counsel for the appellant would urge that as the suit property falls within *lal lakir*, there is no document of title in regard thereto, therefore, the appellant was not supposed to manufacture a document of title for the purpose of present *lis*. It is further argued that Nasib Chand-defendant No. 1, in his cross examination, has admitted that the suit property falls within *lal lakir*.

Indisputably, the appellant/plaintiff did not produce any document of title of Harbans Lal in order to claim that he has become co-owner in the suit house on the basis of natural succession to Shri Harbans Lal (since deceased) and entitle to seek partition of his share. No such plea has been raised in the plaint that suit property falls within *lal lakir* of a village. On the contrary, the plaintiff/appellant has pleaded that the suit

house bears No.W.A.21, Ali Mohalla, Kucha Baghwan, Sheikha Bazar, Jalandhar meaning thereby that the suit property is urban property and not rural property. In the given circumstances, the appellant cannot be heard to say that the suit property falls within *lal lakir* of a village nor can he derive any advantage to his contention from the alleged admission by Nasib Chand - defendant No. 1 which is beyond pleadings of the parties. In this view of the matter, no error much less perversity can be noticed in the judgment passed by the Court in appeal reversing the judgment and decree passed by the trial Court and rejecting plea of the appellant/plaintiff claiming co-ownership in the suit house.

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 in re-filing the appeal is of academic relevance.

(Rekha Mittal)
Judge

16.10.2018
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