

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

**RSA No.5900 of 2017 (O&M)
Date of Order:05.10.2018**

Vijay Pal

..Appellant

Versus

Sarda Ram deceased through his LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ram Bilas Gupta, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing suit for mandatory injunction and permanent injunction, directing the defendant to deliver possession of the property marked with letters “B C D E” and “L M N C”.

It is not disputed that plaintiff and defendant are brothers and recorded joint owners in the revenue record. Plaintiff has further pleaded that earlier he had filed a suit for permanent injunction in which injunction was granted but the defendant in violation of the injunction order had taken over possession of the entire property. Hence, the previous suit was got dismissed as infructuous with permission to file fresh one. Thereafter, the plaintiff filed the present suit by adding the relief of mandatory injunction.

Defendant contested the suit and pleaded that it is he who had

purchased the property from Sh. Gopi Chand etc. after payment of Rs.400/- and, therefore, the property exclusively belongs to him.

Both the courts after examining the evidence have recorded a concurrent findings that the defendant failed to prove his case. He failed to lead substantive evidence to prove that the property was purchased from Sh. Gopi Chand etc. exclusively by him.

This court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has submitted that in the lay out plan, no property is marked with the words "L M N C". However, on being questioned, he admitted that such argument was never raised before the courts below. Still further a copy of the lay out plan has been produced which clearly shows that the plaintiff is only praying for delivery of possession of $\frac{1}{2}$ portion of the joint property.

Learned counsel for the appellant has relied upon a judgment passed by this court in the case of **Joga Singh and others v. Financial Commissioner(Appeals), Punjab Mini Secretariat, Sector 9, Chandigarh and others, 2017(3) Law Herald 2051** to contend that without a document, the partition cannot be assumed. It may be noticed that the aforesaid judgment is referring to partition of the agricultural land and the court was dealing with entirely different situation. In the present case, dispute is with regard to a joint property, which is a residential house.

In such circumstances, the aforesaid judgment would have no applicability.

For the reasons recorded hereinabove, this court does not find

any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

October 05, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No