

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5924 of 2017

Date of Decision : 26.03.2018

Gurcharan Singh

....Appellant

Versus

Sukhdev Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.S. Sodhi, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-respondent no. 1 (Sukhdev Singh) filed suit seeking the relief of declaration, partition and permanent injunction as follows:-

“Suit for grant of decree of declaration that the plaintiff is the owner in possession of 37 marlas in Gair Mumkin Abadi. Plots out of plots bearing khasra nos. 428 (measuring 2 kanals 07 marlas) and 423 (measuring 2 kanals 02 marlas) total measuring 89 marlas as entered in the jamabandi for 2006-07 as shown in the attached site plan marked as 'ABCD', 'EFGH', 'HGJI' & 'IJKL' situated in the abadi of village Bhinder Kalan, Tehsil & District Moga & for partition of his share by metes and bounds for possession of his share after partition, with a consequential relief of permanent injunction restraining the defendants from raising any other construction over any part of the said property till final partition of the shares of the parties by metes and bounds, till the final decision of the case.”

The suit was decreed, allowing the relief of declaration,

partition and injunction, as prayed for. The appellant filed appeal, which was also dismissed.

3. Learned counsel for the appellant has argued that plaintiff raised the issue of title over the suit property and sought partition of the same despite the fact that vide compromise dated 27.07.1990 (Annexure A-1) the suit land has already been partitioned. Admittedly, compromise dated 27.07.1990 was not pleaded by the appellant in his written statement and Ist Appellate Court has rejected this agreement with the observations as follows:-

“17. As per basic law any fact, which has not been pleaded cannot be allowed to be proved but the defendant belatedly propounded a document dated 27.07.1990 Ex. D1 by proclaiming that through the above said agreement, a partition occurred between him and plaintiff Sukhdev Singh. Almost entire evidence led at the trial was centered to prove such writing. As the said writing Ex. D1 and the contention contained in it was beyond pleadings, hence the learned lower Court brushed it aside by observing that defendants were precluded from setting up an altogether distinct case in their evidence as they were never qualified to travel beyond the pleadings. It was in these circumstances that the learned lower court discarded document Ex. D1.”

4. Law is well settled that a document beyond pleadings cannot be looked into. There is nothing to suggest as to why the appellant has avoided to plead compromise dated 27.07.1990 and then to produce evidence that

this compromise was acted upon by the parties. In the absence of any pleading and proof, the Courts below have committed no error in rejecting this compromise. Learned counsel for the appellant has fairly conceded that once this compromise is discarded, the appellant is left with no plea to raise while challenging the concurrent judgments of Courts below.

5. Consequently, this appeal has no merit and the same is dismissed.

March 26, 2018
jk

(SURINDER GUPTA)
JUDGE

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