

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

Regular Second Appeal No.953 of 2018 (O&M)

Date of Decision: 13.03.2018

Shyam Lal

. . . Appellant

Versus

Shyam Sunder and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rakesh Bakshi, Advocate
for the appellant.

Ramendra Jain, J. (Oral)

CM -2355-C-2018

For the reasons mentioned in the application, delay of 37 days in re-filing of the present appeal is condoned.

The application stands disposed of.

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Unsuccessful plaintiff through this regular second appeal has assailed the judgment and decree dated 18.01.2014 of the trial Court dismissing his suit and judgment and decree dated 04.09.2017 of the First Appellate Court, affirming the aforesaid judgment and decree of the trial Court with modification granting liberty to the appellant-plaintiff to seek partition of his share in the suit property.

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Briefly stated, a plot approximately measuring 110 square yards was purchased jointly by deceased Ganesh and his two sons namely Shyam Lal (plaintiff-appellant) and Shyam Sunder (defendant-respondent No.1) in equal share vide sale deed 12.01.1987. Thereafter, construction was raised thereon with joint funds. Before death, said Ganesh, executed a Will dated 25.01.1998 bequeathing his $\frac{1}{3}^{\text{rd}}$ share in favour of appellant-plaintiff. Resultantly, appellant-plaintiff became owner in possession of the house in dispute to the extent of $\frac{2}{3}^{\text{rd}}$ share, whereas, his brother respondent-defendant no.1 remained owner to the extent of $\frac{1}{3}^{\text{rd}}$ share. According to the appellant-plaintiff, in a family partition amongst them eastern portion of the house in dispute as shown in the site plan as AGEF with green and blue colour had fallen to the share of plaintiff-appellant and $\frac{1}{3}^{\text{rd}}$ share on the western side as shown in the site plan as GHEJ with green colour came to the share of respondent-defendant No.1.

On the basis of aforesaid family settlement, plaintiff-appellant wanted to construct a wall to separate his portion from respondent-defendant No.1, but on the request of respondent-defendant No.1, the construction of wall till the time he does not construct his separate house was deferred. Thereafter, respondent-defendant No.1 become dishonest and restrained the appellant-plaintiff from raising partition wall separating his share, forcing the appellant-plaintiff to file a suit for declaration, mandatory and permanent injunction against respondent No.1-defendant to declare him absolute owner in possession of the portion shown in the letters AGDEF in the house in dispute and directing respondent-defendant No.1 to hand over vacant physical

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possession of the portion BCGD and to restrain him from objecting in raising the partition wall in between a wall point 'G' to 'D' to separate his portion.

The learned trial Court after holding trial, dismissed the suit vide judgment and decree dated 18.01.2014.

Being aggrieved, the appellant approached the First Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 04.09.2017.

Learned counsel for the appellant contends that both the Courts below failed to appreciate that the fact of oral partition amongst the parties was well proved from the statements of respondent-defendants No.2, 4 and 5 and also from the cross-examination of DW-2 Shri Ram Dulara which was also acted on the same date and that since then the parties were residing separately in their respective portions.

Having given considerable thought to the submissions made by learned counsel for the appellant, I find the instant appeal completely devoid of any merit, for the reasons to follow:-

No question of law much-less substantial has been raised or arises in the instant appeal, therefore, the same is not maintainable.

The appellant-plaintiff based his claim on the basis of some oral partition between him and his brother respondent-defendant No.1. Both the Courts below after appreciation of evidence led by the parties to their satisfaction have come to the conclusion that the appellant-plaintiff has miserably failed to prove any such oral partition amongst him and his brother respondent-defendant No.1.

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In such circumstances, the First Appellate Court has rightly given liberty to the appellant to seek remedy of partition of 2/3rd share in the suit property.

I have gone through the judgments of both the Courts below and find no illegality or perversity in the same.

In view of the discussion made above, the appeal is dismissed.

[RAMENDRA JAIN]
JUDGE

March 13, 2018
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No