

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

RSA No. 527 of 2019(O&M)

Date of decision: 26.8.2019

Mangal Singh

.....Appellant

VERSUS

Gurcharan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H.R. Bhardwaj, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration that plaintiff and defendants are owners and in possession of property mentioned in head-note of the plaint with consequential relief of permanent injunction restraining defendants No.1 and 2 from raising construction over the suit property before getting the same partitioned was dismissed by the trial Court vide judgment and decree dated 18.11.2015 that came to be affirmed in appeal by the Additional District Judge, Ambala on 31.05.2018.

Counsel for the appellant has assailed concurrent findings recorded by the Courts by making two-fold submissions. It is argued that the Courts have wrongly relied upon the site plan produced by the defendants while ignoring the site plan Ex.P1 produced and proved by the

appellant/plaintiff. It is further submitted that in the disputed area measuring 183 square yards which was earlier owned by Sh. Hira Singh, father of the parties, there are existing two rooms, two cattle-sheds and some trees but the said area was left as it is with an understanding that co-owners would be entitle to raise construction thereon after partitioning the said 183 square yards. It is further submitted that findings recorded by the Courts are not based upon correct appreciation of materials on record, therefore, cannot be allowed to sustain.

Before advertng to submissions made by counsel for the appellant, it is pertinent to recapitulate that in the second appeal, interference in concurrent findings of fact is permissible if the same suffer from perversity. Equally settled is that the Court in second appeal cannot interfere in concurrent findings of fact merely because a different view is possible on re-appreciation of evidence on record. In the case at hand, admittedly, the parties have their separate houses in the area adjoining the suit property. The plea of the appellant is that though the parties have made partition of the remaining adjoining area but the disputed area measuring 183 square yards was kept joint in which the appellant/plaintiff has 1/5th share being one of the class-I heirs of Sh. Hira Singh. Once it is the plea of the appellant himself that remaining property left behind by Sh. Hira Singh was partitioned amongst his sons and they have raised construction of their houses thereon, it was obligatory for the appellant to adduce cogent and convincing evidence that a part of the property was kept joint but he has failed to do so. Rather, it has been proved on record in view of admission made by the appellant that he is residing far-away from

the suit property which is being used by defendants No.1 and 2 for tethering the cattle etc.

In view of the above, I do not find an error much less perversity in consistent findings recorded by the Courts warranting intervention.

For the foregoing reason, finding no merit, 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 only.

AUGUST 26, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no