

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.2705 of 1988 (O&M)
Date of Decision.27.05.2019

Ram Kishan and another

...Appellants

Vs

Geeta Ram (deceased) through LRs and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Partap Singh, Advocate
for the appellant.

Mr. Chankya Pandit, Advocate
for the respondents.

-.-

AMIT RAWAL J. (ORAL)

The present regular second appeal is at the instance of the plaintiffs whereby in suit for permanent injunction sought protection of exclusive possession from forcible dispossession in respect of suit property, though in joint ownership, the trial Court decreed the suit but the lower Appellate Court reversed the same.

Mr. Keshav Partap Singh, learned counsel appearing on behalf of the appellants submitted that concededly parties to the *lis* are co-sharers. The exclusive possession of the plaintiffs has been admitted by the defendants. Even the revenue record also established his possession and the partition proceedings are pending, thus, the lower Appellate Court abdicated in reversing the finding rendered by the trial Court.

Per contra, learned counsel appearing on behalf of the respondents, on instructions from his client, submitted that *bara* is

not part of partition, though the total chunk of land is approximately 98 kanals 5 marlas. There is no proof of exclusive possession, therefore, prayed for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. This Court while admitting the appeal on 3.12.1988 granted the stay as prayed for. The appeal is pending since then. Once partition proceedings are pending, I am of the view, that it would be a farcical exercise in commenting upon merits and demerits of the appeal. Concededly, parties are co-sharers in respect of aforementioned parcel of land. In case, in the application for partition, *bara* is not included, it will not preclude any of the parties to seek amendment and include the same.

In view of aforementioned observation, I dispose of the regular second appeal while maintaining the aforementioned order till the culmination of the final partition proceedings by original Court with direction to the Assistant Collector 1st Grade Karnal to decide the partition application within a period of six months from the date of receipt of certified copy of this order. The original records be sent back.

(AMIT RAWAL)
JUDGE

May 27, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No