

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2830 of 1988 (O&M)

Date of Decision: April 11, 2019

Piare

...Appellant

Versus

Krishan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Umesh Aggarwal, Advocate,
for the appellant.

None for the respondents.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the judgments and decrees of the courts below, whereby the suit of the respondent-plaintiffs for partition of the suit land, has been decreed and affirmed in appeal.

Respondent-plaintiffs, in the year 1985, sought the partition of the land described in letters ABCD in the site plan, which was constructed by Inderaj, father of the defendants and grand-father of the plaintiffs in four equal portions. Stated to have remained jointly for about 25 years. The house was joint and, therefore, plaintiffs had 1/4th share and they were occupying short portion of the same and sought the partition.

Defendant Nos.1 and 3 contested the suit, whereas defendant No.2 admitted the claim of the plaintiffs. It was alleged that a private partition was effected 22 years back and defendants in lieu thereof,

constructed a pucca house, as a result thereof, defendant No.1 and his son got $\frac{1}{2}$ share of the same and remaining $\frac{1}{2}$ share was with defendant Nos.2 and 3. On 08.05.1986, a compromise was effected, wherein defendant No.1 had agreed to hand over the vacant possession of the poly after removing certain articles and building material.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the property in dispute is the joint property of the parties in suit, as alleged? OPP*
- 2. Whether the plaintiff is entitled to recover possession of his $\frac{1}{4}$ share? OPP*
- 3. Whether the suit is not valued properly for purpose of court fee? OPD*
- 4. Whether the suit is time barred? OPD*
- 5. Whether the plaintiffs have no locus standi to file the suit? OPD*
- 6. Relief.”*

Plaintiffs examined three witnesses, whereas defendants examined four witnesses.

Mr. Umesh Aggarwal, learned counsel representing the appellant- defendant emphatically relied upon Ex.D1, compromise deed dated 08.05.1986 regarding partition of the land as per the site plan, where the parties to the lis have already compromised, but did not deny the fact that the same was not reflected in the revenue record. Even it would not be material if by implication of act and conduct the parties would live separately in terms of the agreement and, thus, urged this Court for setting-aside the concurrent findings and dismissal of the appeal.

There is no representation on behalf of respondent Nos.1, 2 and 5, despite service. The appeal is of 1988, therefore, I proceed to decide the

same on merits.

I have heard the learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant as no substantial question of law arises for determination.

Ex.D1 is post filing of the suit. If it was so, the plaintiffs could have withdrawn the suit. Ex.D1 does not bear the signatures of the plaintiffs. It is an unilateral act of the defendants and assumed partition according to their convenience. The revenue record reflected the jointness and co-ownership. In my view, the courts below rightly discarded the compromise and passed the preliminary decree.

For the reasons mentioned above, concurrent findings of facts and law arrived at by the courts below cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

The stay granted by this Court vide order dated 17.03.1989 stands vacated.

April 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No