

RSA-53-1989 (O&M)

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

**RSA-53-1989 (O&M)
Date of decision : 12.04.2019**

Kanwar Singh (deceased) through LRs

... Appellant

Versus

Roshan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.L. Verma, Advocate
for the appellant.

Mr. Umesh Aggarwal, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The Substantial Question of Law which arises for determination is whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity, much less, result of mis-reading of the oral and documentary evidence.

The plaintiff in a suit claimed the relief of declaration in the following manner:-

"That the plaintiff prays that a decree for declaration to the effect that the plaintiff is the sole owner and in possession of the Plot No.95 mentioned in Khewat No.72 Khata No.83 of the jamabandi 1977-78 of Village Kaliawas Tehsil and District Gurgaon and marked STVW in yellow colour in the plan attached with the plaint and the defendant No.1 is not entitled to get it partitioned, be passed in favour of the plaintiff against the defendant No.1. In the alternative a decree for declaration to the effect that the house mentioned in para No.1 of the plaint and marked ABCDEFGHIJK in the plan attached, is the joint

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property of the plaintiff and defendants 1, 2 and Surjan deceased and the plaintiff has 9/40th share in the same be passed in favour of the plaintiff and against the defendant No.1, 2 and defents. 3 to 8 as LR's of Surjan deceased). Costs of the suit be also kindly awarded."

While filing reply to the aforesaid pleadings, defendant No.1, being contesting, in paragraph No.5, has stated as under:-

"5. That the suit is mala fide, and the malicious one. The plaintiff has no cause of action at all. It has been filed to choke and forestall the partition proceedings before the Assistant Collector between the parties in regard to the plots of lands bearing Khasra No.95, 114/1, 114, 117, 118 and other joint lands. The A.C. 1st Grade has already sanctioned the partition. The plot bearing Khasra No.95 has been allocated to the plaintiff himself in the partition by the Asstt. Collector 1st Grade, Gurgaon. Consequently, the plaintiff has no grouse in the matter at all. The present suit of the plaintiff in this direction is misconceived and is totally infructuous. It is liable to be dismissed in limine. As regards the plot bearing khasra No.94 is concerned, it is in possession exclusively and ownership of the answering defendant after the death of who had succeeded to it through a will made by Shri Mansukh son of Khem Ram son of Kishan Sahai of Kaliawas. The plaintiff has wrongly included the said plot in his site plan produced with the plaint. It is not the joint plot. The plaintiff has no share therein at all, nor is the plaintiff in possession thereof."

Defendant No.1 also set up a Will of Mansukh Singh, the common ancestor.

The trial Court on the basis of the evidence brought on record, decreed the suit, however, the lower Appellate Court, has reversed it as the plaintiff was not able to connect with the property.

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Mr. Verma, learned counsel appearing on behalf of the appellant-plaintiff submitted that in view of the stand taken in the written statement, the lower Appellate Court has committed illegality and perversity and the suit is liable to be decreed on the basis of the pleadings.

Mr. Umesh Aggarwal, learned counsel appearing on behalf of the respondent-defendant did not deny that in the partition proceedings, Khasra No.95 was allotted to the plaintiff.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that the Substantial Question of Law, as framed above, is liable to be answered in favour of the appellant-plaintiff, for, on cumulative reading of the prayer clause as well as the written statement, where there is no dispute to khasra No.95, there was no occasion for the lower Appellate Court to differ with the findings rendered by the trial Court as the simpliciter suit was only with regard to the declaration of Khasra No.95.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law being perverse and the same is hereby set aside and that of the trial Court is restored. The Substantial Question of Law, as noticed above, is answered in favour of the appellant-plaintiff and against the respondent-defendant. Resultantly, the present second appeal is allowed.

12.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No