

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

RSA No.2137 of 2019 (O&M)
Date of Decision.30.04.2019

Raghbir Singh and others

...Appellants

Vs

Balbir Singh and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Viridi, Advocate
for the appellants.

-. -

AMIT RAWAL J. (ORAL)

The regular second appeal is directed against the concurrent finding of fact whereby suit for separate possession by way of partition to the effect of 1/3rd share each of the plaintiff and defendant No.1 as referred to in the plaint, has been decreed.

The respondents-plaintiffs alleged that Parsin Singh, father of the plaintiffs and defendant was in possession of the property. There was a house and *bara* of Parsin Singh as property No.1 whereas property No.2 was the *ruri* and property No.3 was *bara*. After demise of Parsin Singh, he left behind three sons i.e. plaintiffs and defendant No.1 and two daughters namely Tej Kaur and Pritam Kaur.

Defendants No.1, 4 and 5 opposed the suit and stated that they had been in exclusive possession of property No.2, 3, 4 and 5 whereas property No.1 was possessed by the plaintiffs. Parsin Singh, on 20.02.1987, also executed a Will in favour of the plaintiffs, and defendant and by virtue of the same had become owners of the

property.

Defendants No.2, 3, 6 and 7 filed separate written statement and admitted claim of the plaintiffs.

Since the parties were at variance, the trial Court framed as many as four issues.

Plaintiffs examined three witnesses including Draftsman and brought on record site plans as Ex.P1 and P2 whereas defendants examined DW1 and closed evidence.

Mr. Viridi, learned counsel appearing on behalf of the appellants submitted that the plaintiffs miserably failed to place on record any material to establish the possessory rights of Parsin Singh over all the properties. He was in possession of property No.1 whereas defendant No.1 was of all other properties since long, thus, onus qua jointness remained undischarged. It was categorical stand in the written statement that defendant No.1 was in exclusive possession of property Nos.2 to 5 since long, though no date and year has been mentioned. Property No.1 had already been partitioned orally and parties have raised construction in their respective portions.

I am afraid aforementioned argument of Mr. Viridi is not sustainable, for, the alleged registered Will has not been proved on record as well as date of death of Parsin Singh. Presumption of joint possession has to be drawn qua aforementioned properties as Parsin Singh left behind children in the absence of testamentary document, thus, they had right to succeed by way of natural succession. The case of parties is not for declaration of title but only for possessory

rights by way of partition.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 30, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No