

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

Date of decision: 11.02.2019

1. RSA No.973 of 2012 (O&M)

Rajinder Singh @ Kaka

..... Appellant

Versus

Mohinder Singh and others

..... Respondents

2. RSA No.1317 of 2012 (O&M)

Rajinder Singh @ Kaka

..... Appellant

Versus

Mohinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Balbir Singh, Advocate
for the appellant (in both appeals).

Mr. R.S. Chauhan, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-12659-C-2018 in RSA-973-2012

CM-13037-C-2018 in RSA-1317-2012

Prayer in the applications are to bring on record legal heirs of
the respondent-Mohinder Singh.

Both the applications are allowed subject to all just exceptions.

The legal heirs of the respondent-Mohinder Singh as mentioned in the
application are ordered to be brought on record for the purpose of
defending this appeal only.

Main Cases

Vide this judgment, I shall be disposing of two regular second appeals bearing RSA No.973 of 2012 and RSA No.1317 of 2012 which are connected.

Defendant-appellant is in the regular second appeal against the judgments passed by the Courts below.

Plaintiff-respondent filed a suit for separate possession by way of partition of house which has been described under the heading 'A' whereas the defendant not only filed the written statement but also filed a counter claim claiming that although, in partition, the property under heading 'A' has fallen to his share but in case that is not proved, the houses under headings 'B' and 'C' are also joint properties and liable to be partitioned.

Both the Courts on appreciation of evidence have held that the partition by way of family settlement as asserted by the defendant-appellant is not proved. Therefore, the Courts have ordered passing of a preliminary decree for partition with respect to the property under headnote 'A'. However, both the Courts have dismissed the counter claim filed by the defendant-appellant with respect to the property under heading 'B' and 'C'. The learned Court while recording finding with regard to the properties under headings 'B' and 'C' have recorded that since the defendant who was the plaintiff in the counter claim has not appeared in evidence and in the partition proceedings, the houses under heading 'B' and 'C' have fallen to the share of the plaintiff-respondent, therefore, such property cannot be included in the partition.

This Court has heard learned counsel for the parties at length

and with their able assistance gone through the judgments passed by the Courts below and the record.

It would not be appropriate for this Court to record any detail finding since this Court only intends to remit back the matter to the trial Court for re-decision.

It is undisputed that one house is situated in Khasra No.1117 which is measuring 8 kanals and 8 marlas. Undisputedly, this khasra number is joint between the parties as per the revenue record. Out of total area of 8 kanals and 8 marlas, 3 kanals is being used as an agriculture land and 5 kanals 8 marlas is under a house. It is claimed by the plaintiff-respondent that the aforesaid house was constructed by him. Once the property underneath the house, is part of a joint property, the plaintiff-respondent cannot claim ownership merely on the ground that the house was constructed by him exclusively. It is also not in dispute that Khasra No.1117 measuring 5 kanals 8 marlas was not partitioned by the revenue authorities. Still further, the property under heading 'C' is part of khasra number 2083/1116 which, in total, measures 6 kanals. It is being claimed by the respondent-plaintiff that the aforesaid piece of land had fallen to the share of the plaintiff and thereafter, construction was raised which fact is disputed by learned counsel for the defendant-appellant. The decree for partition by the revenue authorities is known as 'Sanad Taksim' has not been brought on file. In absence thereof, it would not be appropriate for the Court to record any finding. This aspect has also not been examined by the Courts below while dismissing the counter claim filed by the defendant-appellant.

Keeping in view the aforesaid facts, the case is remitted back to

the trial Court to grant opportunity to the parties to lead further evidence. The Court would re-examine the matter. It is well settled that the adverse inference for non-appearance of the party can only be drawn by the Court if the Court comes to a conclusion that sufficient evidence is not available on the file to decide the case. The adverse inference can be drawn only in exceptional circumstances.

Accordingly, the judgments passed by the Courts below are set aside and the Courts are directed to re-decide the matter.

Needless to observe that the Courts would independently decide the suit and the counter claim without being influenced by the judgments which have been set aside and the observations made by this Court.

With these observations, both the appeals are disposed of.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of accordingly.

Parties through their counsel are directed to appear before the trial Court on 08.03.2019.

11.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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