

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

RSA No.6318 of 2016 (O&M)

Date of decision:09.01.2019

Malkiat Singh

... Appellant

Vs.

Gurdeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.K.Aurora, Advocate
for the appellant.

Mr. D.K.Bhatti, Advocate
for the caveator/respondent(s).

AMIT RAWAL J. (Oral)

The present appeal is directed against the judgment and decree of the Lower Appellate Court, whereby, suit of the respondent-plaintiffs dismissed by the trial Court, has been partly decreed and a preliminary decree, has been passed.

The plaintiffs instituted the suit and claimed partition of the suit property. The appellant-defendants opposed the suit and one of the objections taken was that it was hit by partial partition. The trial Court dismissed the suit but the Lower Appellate Court remitted the matter by framing an additional issue 6-A. The plaintiffs submitted an application for amendment of the plaint which was rejected and affirmed by this Court in revision petition and thereafter, suffered a statement and had forgiven the rights in respect of the property, not included in the plaint.

Mr. H.K.Aurora, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that statement could not have been looked into in the absence of statements of other co-sharers regarding the property, not included in the plaint.

I am afraid the aforementioned argument is not sustainable as the Lower Appellate Court extracted the statement while differing with the reasons assigned by the trial Court, in other words, share of other co-sharers in view of the statement had increased, therefore, they would not be necessary to suffer the statements as they have been benefitted.

In view of such circumstances, the suit could not have been dismissed on account of partial partition. The findings of fact and law arrived at by the Lower Appellate Court are based upon the evidence and statement brought on record and cannot be said to be suffering from illegality and perversity.

No ground for interference is made out.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No