

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 5425 of 2015 (O&M)
Date of Decision:22.7.2019**

Prem Singh

---Appellant

versus

Laxmi Narayan and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. J.P.Sharma, Advocate
for the appellant**

**Mr. Ajay Jain, Advocate
for the respondents**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings of fact recorded by the courts whereby suit for permanent injunction restraining the defendants-respondents from interfering in peaceful possession of plaintiff over suit property as well as alienating or creating any charge over the same, was dismissed by the trial court vide judgment and decree dated 22.1.2013 that came to be affirmed in appeal preferred by unsuccessful plaintiff-appellant.

The present litigation is a family dispute between the appellant on one hand and his brother and mother on the other side. The appellant has claimed that he and respondents were owners in possession of land comprised in khewat No. 47 khatauni No. 56 measuring 31 kanal 15 marlas, situated in village Chindaliya, Tehsil Narnaul. The plaintiff and defendants

have been residing at Jaipur but the plaintiff from time to time came to his village and cultivated the land. In the year 1997, on the occasion of Makar Sankranti, an oral partition took place between family members and in that partition, Kothi No. B-15, Parasrampuri Aamer Road Jaipur came to share of defendants and property in dispute came to share of plaintiff. It was also agreed that the defendants would get the name of plaintiff entered in the revenue record regarding property in dispute. One Dalip Singh filed suit for partition which remained pending for few years and because of that defendants could not get entered name of plaintiff in revenue record regarding property in dispute.

Counsel for the appellant would argue that since the respondents-defendants did not contest the suit and opted to be proceeded against ex parte, there is no contest to plea of the appellant in respect of oral partition having taken place between the parties to the suit on the basis whereof suit land had fallen to share of the plaintiff. It is further argued that both the courts failed to appreciate the matter in right perspective particularly the fact that in absence of contest, the averments raised in the plaint and so also testimony of the appellant supported by witnesses examined are deemed to be admitted.

I have heard counsel for the appellant, perused the paper book and records.

The alleged oral partition between the plaintiff and defendants does not get substantiated from any documentary evidence. This is not the plea of the appellant that Kothi No. B-15 at Aamer Road, Jaipur was the joint property of the appellant and defendants. Even this is not the plea that a family settlement took place between the parties wherein the suit land had

fallen to share of appellant-plaintiff. Indisputably, since 1997, the appellant never approached the revenue authorities for making an entry in respect of the alleged oral partition. In the partition proceedings that culminated in issuance of sanad taksim Ex. P1, no such plea was raised by the appellant that land in question had fallen to his share in some oral partition. In the given circumstances, I do not find an error much less perversity in consistent findings recorded by the courts negating plea of the appellant that he had become exclusive owner and in possession of suit land, thus, entitle to injunction against his co-owners recorded as such in the revenue documents.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

22.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No