

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

**RSA No.103 of 2017 (O&M)
Date of Decision.20.03.2019**

Thoru Ram and others
Vs
Kishan Singh and others

...Appellants
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present appeal is directed against the concurrent finding of fact whereby suit of the appellants-plaintiffs for partition of two houses bearing Nos.66 and 61 allotted in favour of three persons has been dismissed by the trial Court and affirmed in appeal.

The plaintiff sought partition of aforesaid property by relying upon the site plan Ex.P2 and P3 proved through the testimony of Draftsman to establish that the share was lesser than what it should have been. In fact, they are in possession of lesser area vis-a-vis the defendants.

Defendants opposed the suit by raising two-fold objections qua maintainability of suit being hit by partial partition as land measuring 2 kanals 2 marlas was included and oral partition with regard to aforementioned plots had already been reflected, as the parties to the *lis* have been in exclusive possession since long.

Both the parties led evidence in support of their respective pleadings.

Mr. Munish Gupta, learned counsel appearing on behalf of the appellants submitted that though defendants have been able to

prove on record other parcel of land measuring 2 kanals 2 marlas to be in joint holding, Courts below accepted the plea qua partial partition but his right qua aforementioned property could have been protected, as it would seriously affect determination of his share.

I am afraid aforementioned argument is not sustainable for the simple reason that the site plan shown to this Court during the course of hearing shows that both parties to the *lis* are in possession of same area i.e. five rooms each with bigger courtyard in possession of plaintiff than the lesser one of defendants. In such circumstances, plaintiff, in my view, has failed to prove the case of lesser share as pleaded in the plaint.

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

March 20, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No