

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2415 of 2017 (O&M)

Date of Decision: March 19, 2019

Shanti

...Appellant

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Shilak Ram Hooda, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the appellant-plaintiff has not been successful in claiming possession by way of partition of double storey house consisting of two rooms at the first floor and two rooms, one verandah, one bath room, open court yard and stair case at the ground floor.

It was alleged that a family settlement had taken place after the death of Naunand amongst his four sons, namely, Pyare Lal, Nafe Singh, Sube Singh and Darshan. The suit property detailed in Para No.1(a) and (b) of the plaint fell to the share of Pyare Lal and after his death, husband of the plaintiff, namely, Azad and defendant Om Parkash inherited the same in equal share, i.e., half share.

The aforementioned suit was opposed by the defendant by raising preliminary objections qua maintainability of the suit and denied the co-ownership of the plaintiff and alleged that the defendant was owner in

possession of both the houses and the plaintiff had no concern.

Plaintiff, in support of the evidence, examined herself as PW-1, Sartaj PW-2, Mehar Singh PW3 and Ravinder Singh Draftsman as PW-4 and tendered into evidence site plans Ex.PW4/A and Ex.PW4/B, whereas the defendant examined four witnesses, namely, DW-1 Balraj, DW-2 Jangli, DW-3 Suraj Bhan and DW-4 Rohtash and tendered into evidence site plan Ex.D2. Plaintiff also tendered copy of judgment and decree dated 19.03.2002 as Ex.PA and Ex.PB and closed the rebuttal evidence.

Mr. Shilak Ram Hooda, learned counsel representing the appellant-plaintiff submitted that the courts below have non-suited the appellant-plaintiff on two counts, i.e., she has not been able to prove herself to be wife of Azad and co-owner. Mutation Ex.A1, sought to be placed on record by way of additional evidence, reflected that on demise of Azad, his share was inherited in her name.

As regards the other house, there was no denial by the respondent-defendant with regard to the co-ownership. All the aforementioned witnesses were coherent and consistent with regard to the jointness and co-ownership.

I am afraid, the aforementioned arguments are not sustainable for the simple reason that the plaintiff miserably failed to prove the jointness of the property in order to claim the preliminary decree, neither any revenue record. The additional evidence, in such circumstances, reflecting her to be wife of Azad, would be wholly inconsequential. Plaintiff miserably failed to discharge the onus heavily relied upon her.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings, which are based on oral and

documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 19, 2019
ramesh

(AMIT RAWAL)
JUDGE

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