

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

RSA No.3149 of 2017 (O&M)
Date of Decision.22.05.2019

Balbir Singh

...Appellant

Vs

Satyawan (since deceased) through LR's and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vinod S. Bhardwaj, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellants-defendants are in regular second appeal against the concurrent finding whereby suit for partition of residential house situated in village Bhagvi, has been decreed.

It was alleged that Hanmat had two children Ami Lal and Badlu. Ami Lal had daughters Bharpai, Nihali and Jiwni. Badlu had no child and son i.e. Satyawan son of Jiwni was given in adoption. Defendants are successors-in-interest of the daughter Bharpai. After death of Satyawan, Surinder sought partition. Defendants did not deny status as adopted son but alleged that the suit property was not joint as it was situated in *abadi deh* and not fregmentable.

Both the parties led extensive evidence.

Mr. Bhardwaj, learned counsel appearing on behalf of the appellant submitted that there is no evidence on record to establish jointness of the property as it is situated in *abadi deh*. Plaintiff failed to discharge onus. In such circumstances, suit was liable to be dismissed.

I am afraid aforementioned argument would not be

sustainable for the simple reason that adoption of Satyawar son of Jiwni by Badlu was not in dispute. Ancestors of Hanumat were in occupation of the house. In such circumstances, presumption of jointness is liable to be drawn. Since it is abadi area, there is no revenue record but field book is always maintained, which none of the parties had placed on record. The Court had rightly drawn the preliminary decree. As regards non-fragmentation of the property, the appellants shall be at liberty to take aid of provisions of Section 2 and 3 of the partition Act, as and when any application for final decree is brought and for the Nohra, subject to any terms and conditions as the Court may deem appropriate, if necessary.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by 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

May 22, 2019
Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No