

RSA-3459-2017 (O&M)

**123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-3459-2017 (O&M)

Date of decision : 26.03.2019

Bagicha Singh (deceased) through LRs and others

... Appellants

Versus

Dilbag Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surinder Sharma, Advocate for the appellants.

Mr. Kapil Khanna, Advocate for the caveator/respondent.

AMIT RAWAL, J. (ORAL)

CM-8346-C-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 561 days in refiling the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellants-defendants are in the present regular second appeal against the concurrent findings of fact, whereby the preliminary decree in a suit for partition claiming separate possession, in respect of the land measuring 1 kanal 8 marlas, has been passed.

The plaintiff claimed the partition, on the basis of the joint khata in the revenue record.

The defendants propounded the oral settlement in the year 1981 and executed on 04.06.1989.

The plaintiff in support of the pleadings examined himself as PW1 and brought on record revenue record i.e. jamabandi and site plan (Ex.P1/A and Ex.P1/B) to establish the joint possession. On the other hands,

RSA-3459-2017 (O&M)

the defendants examined seven witnesses and brought on record many documents.

Mr. Sharma, learned counsel appearing on behalf of the appellants-defendants submitted that both the Courts below non-suited the defendants only on the ground that writing did not bear the signatures, but the signatures were on the stamp. That is the sufficient requirement in law, even other witness also deposed on the same line, therefore, the preliminary decree is liable to be set aside.

I am afraid the aforementioned argument is not sustainable as the present suit for partition was filed in the year 2001, whereas the alleged partition, on the basis of the writing, is of the year 1981. If at all, the parties actually arrived at partition, the same would have reflected in the revenue record. No effort was made. The defendants failed to discharge the onus regarding proving of the aforementioned partition. In such circumstances, the preliminary decree was inevitable.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Sharma, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

26.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**