

RSA No. 4036 of 2018 (O&M)

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

**RSA No. 4036 of 2018 (O&M)
Date of decision: 08.11.2019**

Man Singh (now deceased) through LRs

... Appellants

Versus

Nirmal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Deepak Sonak, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiffs was dismissed by the trial court, vide judgment and decree dated 30.1.2014, and as even the appeal preferred against the said decree failed and was dismissed on 18.11.2017, they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a decree for possession by way of partition.

In brief, the case set out by them was that they and defendants were residents of village Bakali, Sub Tehsil Ladwa, District Kurukshetra and they constituted a joint Hindu Family, being heirs of the deceased (Santa Singh). They were co-owners of the property shown as 'ABCD' in the site plan appended with the plaint. The suit property, i.e. Baithak, was owned and possessed by the plaintiffs and defendants in equal shares, and for it was still joint and not partitioned, thus the suit.

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In the written statement filed by defendants No. 1,3,5,7 to 9, it was pleaded, *inter alia*, that parties were residing separately for the past over 60 years. Therefore, it could hardly be concluded that they constituted a joint Hindu Family. In fact, the suit property exclusively belonged to the answering defendants for their father constructed the said Baithak and they were in possession thereof since long. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that plaintiffs had claimed that suit property was still joint between the parties, and they were in joint possession. However, they failed to adduce any evidence to show if the suit land was ancestral in nature and belonged to their forefathers and later devolved upon the plaintiffs and the defendants. Only a site plan was proved on record by the plaintiffs and, therefore, in the absence of any documentary evidence to prove their title, claim of the plaintiffs could not be countenanced. On the contrary, the defendants had placed on record copies of the electricity bills (Ex.D1 to Ex.D13) in respect of the suit property, i.e. Baithak. It was not disputed either that the said bills were in respect of the suit property. Not just that, Sandeep Kumar (PW1) conceded in his cross examination that they were in exclusive possession of their holdings, which was being cultivated by them for the past 30 years. Further, even their houses were separate from the defendants. Post death of their forefathers, they were neither using the disputed property, nor paying the electricity bills in respect thereto. Further, the records showed that there were other properties as well, owned by the parties, such as residential houses etc., but there was no reference thereto in the plaint. Thus, the present suit for partial

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partition was not even maintainable. That being so, the only and the inevitable conclusion that could be reached: suit was liable to be dismissed for lack of cogent evidence. Upon being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 08, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO