

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

RSA No.4645 of 2018(O&M)
Date of decision: 30.09.2019

Subhash and others

... Appellants

Versus

Dharmo Devi and others

... Respondents

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

Present: Mr. J.K. Singla, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellants/plaintiffs as also the counter-claim preferred by defendants No.15 & 16 was dismissed by the trial Court, vide judgment and decree dated 26.09.2016. For even the appeal preferred against the said decree failed and was dismissed by the appellate court on 06.01.2018, the appellants/plaintiffs 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 partition claiming themselves to be the owners in possession of half share in the property depicted in para 1 of the plaint by metes and bounds at the spot. A decree for injunction was also prayed for, restraining defendants No.16, 17 & 20 from causing demolition of the building that existed in the suit property. In brief, the case set out by them was that plaintiffs and defendants were members of a Joint Hindu Family and, thus, were owners in possession of an ancestral residential house bearing No.1409, Ward No.17, Railway Road, Rohtak,

measuring 62 sq. yards. The suit property was in a dilapidated condition and, therefore, defendant No.20 Puran Chand son of Budh Ram and defendants No.16 & 17 Anil and Anand threatened to demolish the said house and construct a new commercial site but without getting the property partitioned.

In the written statement filed by defendants No.1, 2 and 4 to 6 they virtually admitted the claim of the plaintiffs.

In a separate written statement filed by defendants No.3, 8 to 10, 17 and 20, they pleaded that in an earlier family settlement during the lifetime of Sh. Budh Ram, the suit property fell to the share of defendant No.20, Tek Ram, Suraj Mal and Inder in equal shares, for vide said oral family settlement, all the sisters and their father Budh Ram had relinquished their rights in their favour. The said settlement took place in the year 1985. It was denied if the plaintiffs had half share in the suit property as alleged. Further, the plaintiffs were not in possession of any part of the suit property as defendant No.20 Puran Chand was in actual physical possession thereof.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that plaintiffs to prove title to the suit property had relied upon a site plan Ex.P2, which merely showed the existing position at the spot. They also relied upon a photocopy of the partition deed Mark A, which was not even legible. No other evidence was led by the plaintiffs to show that they indeed were owners of the suit property to the extent of half share. Although, in plaint they mentioned that their predecessor-in-interest had become owner of the suit property pursuant to a judgment and decree passed in the Civil Suit No.114, decided on 06.06.1941, but they failed to place on record copy of any such judgment and decree to substantiate their claim. Not just that, no evidence was led

either to show if the plaintiffs were in settled possession of the suit property. The partition (Mark A) could not be read in evidence as a document of title either. Therefore, in the absence of any evidence qua title, the plaintiffs could not seek partition.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions arrived at 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

30.09.2019

Rajan

Whether speaking / reasoned:

YES

Whether Reportable:

NO