

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

Date of decision: 7.11.2019

1.

RSA No.4271 of 2019(O&M)

Om Parkash and others

.....Appellants

VERSUS

Bharat Pal and others

.....Respondents

2.

RSA No.4284 of 2019(O&M)

Mahender and another

.....Appellants

VERSUS

Bharat Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikas P. Singh, Advocate for the appellant.

REKHA MITTAL, J. (ORAL)

This order will dispose of RSA No.4271 and 4284 of 2019 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.4271 of 2019.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for partition and permanent injunction filed by the respondents/plaintiffs in respect of plot bearing khasra No.126/2 (1-17) measuring 2 kanal situated in new abadi and revenue estate of village Agwanpur, Tehsil and District Palwal was decreed by the trial Court vide judgment and decree dated 28.03.2017 that

came to be affirmed in appeal filed by unsuccessful defendants (appellants herein) by the District Judge, Palwal.

Counsel for the appellants has assailed concurrent findings by making few submissions. It is argued that respondents/plaintiffs have not specifically mentioned the area that would fall to their share. It is argued that as it has been proved that parties are in separate possession of different areas of suit property, it is an evidence of oral partition between the co-sharers and substantiate plea of the appellants/defendants that suit property was orally partitioned amongst the co-sharers in the year 2009. Another submission made by counsel is that findings of the trial Court recorded in para 24 of the judgment suffer from gross error rather perversity, therefore, the judgments passed by the Courts are liable to be set aside.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

The trial Court, in para 2 of the judgment, has noticed case of the respondents/plaintiffs particularly the allegations that plaintiffs and defendants No.1 to 6 are co-owners of residential plot bearing khasra No.126/2 wherein plaintiff No.1 has $\frac{41}{144}$ th share, plaintiff No.2 $\frac{1}{24}$ th share, defendant No.1 $\frac{19}{48}$ th share, defendant No.2 $\frac{1}{25}$ th share, defendant No.3 $\frac{5}{72}$ nd share, defendant No.4 $\frac{1}{18}$ th share, defendant No.5 $\frac{6}{72}$ nd share, defendant No.6 $\frac{1}{24}$ th share. Since the plaintiffs have specifically described the extent of their share in the suit property stated to be jointly owned by the plaintiffs and defendants, contention raised by counsel for the appellants that absence of giving the specific area that would fall to their share makes the suit faulty or the judgments being erroneous, is patently misconceived and merits rejection. The area can be safely worked out by making arithmetical calculations.

The appellants/defendants have raised the plea that suit property was orally partitioned amongst the co-owners in the year 2009. They have not disputed that prior to 2009, the suit property was jointly owned by the plaintiffs and defendants. Since the appellants have raised the plea of oral partition being effected in the year 2009, it was obligatory for them to establish the factum of oral partition in order to negate plea of the respondents/plaintiffs with regard to their entitlement to seek partition of joint property. The mere fact that joint owners are in possession of separate parcels of joint land itself is not sufficient to establish oral partition between the co-owners. Counsel has failed to point out that the Courts have failed to take into consideration evidence adduced by the appellants/defendants which has material bearing to decide the question of oral partition or findings of the Courts negating plea of oral partition suffer from perversity that would call for intervention. No sooner, the appellants failed to establish their plea of oral partition, the suit property would be deemed to be jointly owned by the co-owners.

The statement of PW-3 Satbir Singh is not very relevant for deciding the matter in controversy, therefore, any flaw in the said statement would not enure to benefit of the appellants to establish their plea of oral partition. In the given circumstances, I do not find an error much less perversity in consistent findings recorded by the Courts that would call for intervention.

Before parting with this order, it is pertinent to mention that counsel also made an attempt to argue that in case the land is partitioned, there may not be any passage for some of the co-sharers. The factum of carving out a passage to have access to the shares allotted to each of the co-sharers would be subject matter of decision in proceedings for final

partition by way of metes and bounds. The appellants would be at liberty to raise this issue at an appropriate stage of the proceedings.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed in limine. As the appeals have been decided on merits, applications for condonation of delay are of academic relevance only.

NOVEMBER 7, 2019

‘D. Gulati’

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no

(REKHA MITTAL)

JUDGE