

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

**R.S.A No. 5297 of 2019
Date of decision : 19.11.2019**

RoshniAppellant

versus

Raj Kumar and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yash Pal Malik, Advocate
for the appellant.

RITU BAHRI, J. (Oral)

C.M. No. 15009-C-2019

For the reasons mentioned in the application, delay of 02 days in filing of the appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 5297 of 2019

The present appeal is directed against concurrent finding of facts recorded by both the Courts below whereby suit filed by plaintiffs/respondents against the defendant/appellant has been decreed.

Brief facts of the case of the applicants/ plaintiffs are that they had filed suit for possession by way of partition to the effect that the parties are joint owners in possession of double storey constructed House bearing No.1562 having dimensions East-Danda 40' House of Satpal Sharma; West-Danda 40'-House of Hakim Ram; North Danda 25'- Gali 15' wide; South-Danda 25' House of Jai Singh, being part and parcel of Khasra No.7278 situated at Oddawali Gali near Yog School, Shiv Nagar, 12 Quarter, Hisar District Hisar in which the plaintiffs are owners in possession to the extent of 3/4th share and the

defendant is owner to the extent of 1/4th share and the suit property has not been partitioned till date. The plaintiffs had also sought injunction restraining the defendant from dispossessing, alienating or transferring the house in question in any manner. The said suit was decided by the civil court and preliminary decree dated 19.7.2011 was passed whereby the plaintiffs and defendant were held entitled to 1/4th share each in the house in question and the defendant was directed not to alienate the suit property without getting the house in question partitioned.

Thereafter, the defendant/judgment debtor did not file any appeal against the preliminary decree as no summons had been received by the plaintiffs/decreed holders from any Court till date and as such, the preliminary decree has attained finality. Earlier similar application was moved by the applicants, however, the same was withdrawn by the applicants vide order dated 15.7.2015 with permission to file the fresh application on the same cause of action. In the end, it was prayed that the application be allowed and the applicants/plaintiffs be put in separate portion of the house in question

Both the Courts below have given a concurrent finding of fact that the plaintiffs/respondents have been able to establish that the suit property is still joint between the parties to the suit. The appellant has miserably failed to prove that she was its absolute owner and in exclusive possession over the same. The suit property has been proved to be inherited jointly by the parties to the suit and it has not been partitioned till date by metes and bounds from competent court of law. The appellant has not been able to prove that the family settlement was effected in any record. Further appellant has admitted that she was given suit property by her parents. Thus, the induction in the suit property of the appellant is permissive. She has been allowed to remain in possession with the consent of

parents. The appellant has failed to prove that she has remained there as owner and now has become owner by way of adverse possession.

Learned counsel for the appellant has not been able to show that whether any family settlement was arrived at between the parties.

Further during the course of proceedings in the trial Court, Naib Tehsildar was appointed as Local Commissioner vide order dated 08.05.2017 and he submitted his report regarding mode of partition on 01.09.2017. Against this report, no objection was tendered by the applicants and the respondent and thus the mode of partition suggested by the Naib Tehsildar was finalized.

Accordingly, the concurrent findings of facts recorded by both the Courts does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

November 19, 2019
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>