

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

RSA No. 2307 of 2001 (O&M)

Date of Decision: 14.01.2020

Daya Krishan

....Appellant

Versus

Ram Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Varun Jain, Advocate for
 Mr. Arihant Jain, Advocate
 for the appellant.

 Mr. Abhishek Goyal, Advocate for
 Mr. Pardeep Goyal, Advocate
 for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in regular second appeal against judgment passed by learned First Appellate Court reversing the judgment-decree passed by the trial Court. The plaintiff had filed a suit for passing a decree for possession by way of partition of joint land measuring 7 biswas comprising khewat khatauni no. 197/427 khasra no. 170/14/0-4 and 170/16/0-3 according to jamabandi for the year 1991-92 and one house as shown with letters ABCD and red in colour in the site plan mark X bearing boundaries East: House of Daya Krishan, West Roop Singh son of Moti Ram, North Road and South: Street situated in Sherbani Kot, Tehsil Malerkotla.

Learned trial Court decreed the suit finding that the property is joint between the parties. Learned First Appellate Court affirmed the aforesaid findings however reversed the judgment-decree only on the ground that parties to this litigation are also co-owners of the property in Gair Mumkin Abadi comprised in khasra no. 170/11 (0-2) 170/15 (0-1). The

Court held that the present suit for partial partition is not maintainable.

It is not disputed by the learned counsel for the parties that apart from the plaintiff and the defendant, Sh. Kaka Singh is also co-owner in the land comprised in khasra no. 170/11 and 170/15.

In view thereof, the plaintiff was expected to file a single suit by including land comprised in khasra no. 170/11 and 170/15.

Learned counsel for the respondent does not dispute that the plaintiff and the defendant are co-sharers in the suit land only which can be partitioned by the Civil Court. Remaining land between the parties is agricultural land, for which proceedings for partition are maintainable before the Revenue Authorities under the Punjab Land Revenue Act.

Reliance on this aspect can be placed upon a judgment passed by this Court in the case of ***Sapinder Singh vs. Jang Singh 2012(3) PLR 594.***

Keeping in view the aforesaid undisputed facts, the judgment passed by the learned First Appellate Court with regard to maintainability of suit is set aside. The finding of remaining issues has already been affirmed by the First Appellate Court.

Resultantly, the appeal filed by the plaintiff-appellant is accepted while reversing the judgment-decree passed by the First Appellate Court.

(ANIL KSHETARPAL)
JUDGE

14.01.2020
Maninder

Whether speaking/reasoned : Yes
Whether reportable : No