

RSA-4745-2010(O&M) 1

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

**RSA-4745-2010(O&M)
Date of decision:07.02.2020**

Ran Kanwar

.....Appellant

Versus

Sat Narain

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Abhinav Sood, Advocate for the appellant

Mr. Alok Jain, Advocate for the respondent

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed the present Regular Second Appeal against the judgment passed by learned First Appellate Court dated 31.8.2010 reversing the judgment of the learned Trial Court. The plaintiff by filing a suit on 30.10.2004 has sought declaration that mutation evidencing partition of the property between the brothers vide mutation no.6543-A dated 7.2.1994 is not binding on him. He claimed that total land holding of both the brothers was 104 kanals, out of which 52 kanals 13 marlas fell to his share. However, it has been pleaded that such partition is wrong and against the agreement, as out of the land which fell to his share i.e 52 kanals 13 marlas, 24 kanals 9 marlas is under mortgage whereas the land which fell to the share of the defendant only 6 kanals land is under mortgage. The plaintiff claimed that a fraud has been played. It has been noticed that learned Trial Court simply on

the basis of equity allowed the suit and held that equity demands that the parties should also equally distribute the land which is under mortgage.

Learned First Appellate Court on re-appreciation of evidence has given following reasons to accept the appeal and reverse the judgment passed by the learned Trial Court.

i) The plaintiff failed to draw attention of the Court to any agreement to the effect that mortgage land will be equally divided.

ii) The plaintiff when appeared in evidence was found unreliable as he initially stated that the suit land has not been partitioned whereas in the next line he admitted that an affidavit was given to the Tehsildar for partition of the land. He tried to clarify that he had not appeared before the Tehsildar. He admitted that from the date of partition between the brothers they are in exclusive possession of the land, which fell to their respective share.

iii) The partition of the land which took place in the year 1994, is sought to be challenged, after a period of 10 years.

This Court has heard learned counsel for the parties and with their able assistance has gone through the judgments passed by the Courts below. In the considered view of this Court, there is no merit in the appeal filed by the plaintiff. The parties had divided the property by filing affidavits before the Tehsildar (Revenue Official). The plaintiff-appellant does not dispute that he has filed the affidavit before the Tehsildar. Still further, for 10 years before filing of suit, the parties are already in separate possession. It is also apparent that the plaintiff was allocated little bit more piece of land than the defendant. In such

circumstances, there is no ground to interfere. Hence, dismissed.

07 .02.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No