

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

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RSA 5947 of 2019 (O&M)

Date of decision: 06.01.2020

Puran (since deceased) through his LRs and anotherAppellants

Versus

Prithvi Raj (since deceased) through his LRs and othersRespondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Munish Kumar Garg, Advocate
for the appellants

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Rekha Mittal, J. (Oral)

CM 16936 C of 2019

Heard.

Allowed as prayed for. Delay of 36 days in re-filing the appeal stands condoned.

Main case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration to the effect that respondent/plaintiff - Prithvi Raj (since deceased) represented by his legal heirs is owner in possession of 1/4th share in land measuring 7 kanals 16 marlas purchased vide sale deed No. 114 dated 15.05.1965 was decreed by the trial Court vide judgment and decree dated 12.02.2015 that came to be affirmed in appeal by the Additional District Judge, Jind vide

judgment and decree dated 08.07.2019 as the appellate Court affirmed findings of the trial Court without variance.

Counsel for the appellants has assailed the judgments impugned primarily on two counts. The first submission made by counsel is that the respondent/plaintiff is not in possession of any part of the suit land, therefore, simplicitor suit for declaration without claiming possession is hit by the provisions of Section 34 of the Specific Relief Act, 1963. Another submission made by counsel is that compromise Ex.C1 was entered between the parties and respondent/plaintiff was given equivalent land, therefore, in case decrees are allowed to sustain, it would amount to unjust enrichment of the respondent/plaintiff.

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

Be that as it may, it is undisputed position of the case that the respondent/plaintiff claimed 1/4th share in land measuring 7 kanals 16 marlas purchased vide sale deed No. 114 dated 15.05.1965 in favour of Prithvi Raj, Jagta, Gopi Ram and Puran sons of Maiya Ram. In case claim of the respondent/plaintiff is accepted, he would become a co-owner/joint owner of total land measuring 7 kanals 16 marlas to the extent of 1/4th share, as has been decided by the Courts. In the given scenario, he would be entitle to joint possession of joint land and can recover possession by taking recourse to appropriate proceedings for partition. In this view of the matter, contention of the appellants that suit for declaration without seeking possession of land to the extent of 1/4th share is patently misconceived and accordingly rejected.

So far as plea of the appellants with regard to compromise Ex. C1, the appellate Court, in para 17 of the judgment has held, quoted thus:-

“It was contended that compromise Ex.C1 was entered into between the parties and the plaintiff have been given equivalent land by the contesting defendants, therefore, plaintiff has no case. It is admitted fact that compromise Ex.C1 was not recognized by the Court as stand revealed from zimini order dated 12.06.2012 and even the revision preferred against that order i.e. No. 6852 of 2012 in the Hon'ble High Court Punjab and Haryana, Chandigarh has already been dismissed vide order dated 02.05.2013, therefore, these contentions of counsel for the appellant cannot be given much weightage.”

Counsel for the appellants has not disputed these factual findings recorded by the first appellate Court. That being so, the appellants cannot derive any advantage to their contentions from compromise Ex.C1.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

06.01.2020
Mohan Bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No