

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

RSA No. 2380 of 2018(O&M)

Date of decision: 25.2.2020

Hari Singh and others

.....Appellants

VERSUS

Birender and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Chirag Wadhwa, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for separate possession by way of partition filed by the respondents/plaintiffs in respect of property measuring 25 kanal 2 marlas on the basis of jamabandi for the year 1999-2000 was decreed by the trial Court vide decree and judgment dated 27.03.2014 that came to be affirmed in appeal filed at the behest of some of the defendants by the Additional District Judge, Rewari vide decree and judgment dated 08.08.2017.

The plaintiffs claimed that the property in question was agricultural in nature, subsequently converted into residential by mutual adjustment. Plaintiffs No.1 and 2 have 93/1004 share each and plaintiffs No.3 and 4 have 7/502 share each in view of list of proprietors attached with the plaint. It was further pleaded that as the suit property is joint among the parties, creating difficulty for its use and enjoyment, the same may be partitioned by metes and bounds.

The sole submission made by counsel for the appellants is that since in the plaint, it has been alleged by the respondents/plaintiffs that under some mutual adjustment, the parties have made boundary wall and raised construction and used that portion for their residences, it is an evidence of partition amongst the co-sharers, therefore, the Courts have seriously erred by allowing partition of the property by holding it to be joint amongst the co-owners. In support of his contention, he has relied upon judgment of this Court **Jai Bhagwan and others Vs. Dilbagh Singh and others, 2010(9) RCR (Civil) 368.**

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned and copies of documents supplied during the course of hearing.

Perusal of para 2 of the plaint would reveal that contention raised by counsel for the appellants with regard to mutual adjustment between the parties and raising of construction and boundary wall over some portion is admitted but at the same time, it has been stated that the remaining land is still joint which is shown in the site plan. The Court in appeal had taken note of facts elicited in cross examination of various witnesses examined by the appellants/defendants to negate plea of the appellants that either there was an oral partition or family settlement.

Counsel for the appellants, in response to a query, would fairly concede that there is no evidence on record that co-owners are in possession of area that would fall to their share in view of the extent of their share in the joint property much less they have raised construction on the area to the extent of their share(s). In this view of the matter, I do not

find any reason to interfere in concurrent findings recorded by the Courts negating plea of the appellants qua oral partition or family settlement under which the co-owners have partitioned the joint land. The judgment relied upon by counsel for the appellant has been rendered, in view of peculiar facts and circumstances wherein the defendants therein raised a plea that disputed plots were partitioned about 35 years back soon after consolidation and after partition, they raised construction on different plots and a joint plot bearing No.176 was sold by all the co-sharers. In this view of the matter, the appellants cannot derive any advantage to their contention from the referred authority.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the appellants to press for protecting their possession particularly the portion on which they have raised construction during the proceedings of final decree.

FEBRUAR 25, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no