

RSA-5615-2018 (O&M)

Serial No. 117

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

**RSA-5615-2018 (O&M)
Date of Decision: 05.02.2020**

RAMPHAL

.... Appellant

Versus

RAM NIWAS & ORS

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

**Present:- Mr.Vishal Garg, Advocate
for the appellant.**

ARUN MONGA, J.(ORAL)

1. Having suffered concurrent adverse findings by the two courts below, the Plaintiff/Appellant has preferred the present Regular Second Appeal impugning the judgment and decree dated 27.01.2015 passed by the Trial Court and Judgment and Decree dated 15.05.2018 passed by the First Appellate Court whereby the Plaintiff claims to be the owner of 3/32 share in the total area has been rejected.

2. Succinct factual matrix, as noticed by the courts below is that the Plaintiff (appellant herein) filed a Civil Suit qua land measuring 5 Kanals and 13 Marlas (suit property), as more particularly described in the decree sheet, located in District Jind, Haryana. The suit land is stated to be *Gair Mumkin* land (non-cultivating land). Plaintiff claimed that the suit property is the joint property of the defendants as well as the plaintiff as per their respective shares recorded in the Jamabandi (Revenue Account) for the year 2008-09. Based thereon, the Plaintiff claimed to be the owner of said share of the total land in equal share and the rest of the land is likewise

RSA-5615-2018 (O&M)

3. Per contra the contesting defendants No.5 to 11, 13, 21 & 22 (respondents No.5 to 11, 13, 18 & 19 herein) contested the claim of the plaintiff inter-alia taking an objection that the suit property was already partitioned by convening the local panchayat. Pursuant thereto, Plaintiff's father Rattan Singh agreed to give the residential house (located on Kharsra No.283) to defendant No.13 for a consideration of Rs.60,000/- on 10.04.1990. Likewise, Defendants No.5 to 12 are in possession of the house located at Khasra No.241. On the other hand, Defendants No.14 to 20 are in possession of the house located at Khasra No.253 of which half share is under possession of Defendant No.21. The Defendants pleaded that the plaintiffs had filed the civil suit out of sheer greed as they wanted to usurp the amount of Rs.60,000/- given by Defendant No.13 qua his share. The Defendants submitted that the suit property had been already partitioned, therefore the suit is liable to be dismissed. Qua possession, the defendants case is that the Plaintiffs are not even in possession of 3/32 share of the suit land as the parties herein were given separate possession as per their share pursuant to the family partition which has already taken place.

Based on the rival pleadings of the parties following issues were framed:

1. *Whether the plaintiffs are co-sharer in the suit property as alleged?*
2. *Whether the plaintiffs are entitled to partition of the suit property in dispute as alleged?*
3. *Whether the suit is not maintainable in the present form?*
4. *Relief.*

4. The parties herein adduced their respective oral as well as documentary evidence in support of their pleadings to discharge their onus as per issues *ibid*.

RSA-5615-2018 (O&M)

giving my thoughtful consideration, I am of the view that Regular Second Appeal filed by the Plaintiffs (Appellant herein) is bereft of any merit and is thus liable to be dismissed.

6. The onus of discharging the burden as per issues No.1 and 2 was on the Plaintiffs by establishing that plot comprising of Khasra No(s).241, 253, 287, 475 and 607 are a joint property. In the cross-examination, Plaintiff No.1 himself admitted that Defendant No.13 (Teka) is in possession of Khasra No.283, Defendants No.5 to 12 are in possession over Khasra No.241, Defendants No.14 to 20 over Khasra No.253, 607 and likewise Khasra No.675 is in possession of defendant No.22. Said defendants had constructed respective houses over the said khasra numbers. The evidence adduced established that the parties to the suit are already in exclusive possession of the suit property as per the family settlement. Accordingly, the suit property was held to have been already partitioned by metes_and bounds by the Trial Court. The Trial Court held that Khasra No.241, 253, 283, 275 and 607 even though were recorded in the Jamabandi (Revenue Account) of 2008-09 in the joint names but in reality the partition by way of family settlement had already taken place. Therefore, the suit property could not have been partitioned again as sought by the Plaintiff. The issues No. 1 and 2 were accordingly decided against the Plaintiffs.

7. As regards issue no.3, the trial Court held that the family settlement, be it oral or written, is a legitimate way to partition the respective shares inter se the family members. The Defendants had successfully proved that a written family settlement had been executed which bore the signatures of the father of Plaintiff No.1. The veracity of the said document was not in doubt as the Plaintiffs did not get the signatures

RSA-5615-2018 (O&M)

examined contained thereon from the handwriting expert. Once the document of written family settlement was proved by the defendants, trial Court rightly held that the plaintiff ought to have also joined all the co-owners in the partitioned suit in respect of the entire joint property held by various co-sharers. Since all the co-sharers were not made necessary parties to the suit, the Trial Court held that the suit was bad for non-joinder of Necessary Parties. Issue No.3 was also thus decided against the plaintiffs.

8. Findings of the Trial Court were upheld by the First Appellate Court. The First Appellate Court rightly held that the payment of Rs.60,000/- was voluntarily received by the father of Plaintiff No.1. Having duly accepted said payment neither the execution of Ex-D-6 was denied by the plaintiff nor he questioned the validity of said writing. Pursuant thereto, the family settlement was implemented by all the parties, therefore, no merit was found in the submissions of the Plaintiff and the Appeal was accordingly dismissed.

9. In view of the aforesaid reasons and having perused the grounds of appeal filed herein, I am of the view that no fresh grounds have been raised warranting interference of this Court in present second appeal.

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below on appreciation of evidence.

11. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and reasons recorded therein,

RSA-5615-2018 (O&M)

no interference is called for by this Court.

- 13. Appeal is, accordingly, dismissed.
- 14. Pending application, if any, shall also stand disposed of.
- 15. No order as to costs.

05.02.2020

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(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No