

S.No.109

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

RSA No.5765 of 2018 (O&M)

Date of Decision:02.03.2020

BijenderAppellant

Vs.

Rati Ram and othersRespondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Rajesh Lamba, Advocate for the appellant.

Mr. N.S. Sodhi, Advocate for the caveator/respondents.

Rajbir Sehrawat, J.(Oral)

This is the second appeal filed by the plaintiff challenging the concurrent judgments and decrees passed by the Courts below, whereby the suit for partition of the properties within the Abadi Deh, filed by the plaintiff, has been dismissed.

For the convenience, the parties herein would be referred to as the plaintiff and defendants; as they were mentioned in the suit.

The facts giving rise to the present appeal are that the plaintiff had filed a suit asserting that the plaintiff, the defendant and the proforma defendants were in joint possession of the land within Abadi Deh; which was described in the suit. The suit property was earlier a 'Baithak' and 'Nohra' which was owned by the plaintiff and the defendants, as well as the proforma defendants. However, the building of that Baithak was demolished; being an old construction. However, now without partitioning the property, the defendants were intending to illegally raise construction over the said land. Hence, the partition of the property was prayed for.

The claim of the plaintiff was resisted by defendants No.1 to 4

by filing the written statement. However, after filing written statement, even the defendants did not appear and were proceeded ex parte. But in the written statement, it was pleaded that the suit property was earlier owned by father of defendants No.1 to 4. After the death of their father, the same had devolved upon defendants No.1 to 4. The plaintiff and the proforma defendants were not having any concern with the suit property. Hence, the suit has been filed by the plaintiff without any cause of action.

To prove his case, the plaintiff appeared himself as a witness and was examined in chief. However, even he did not appear for cross-examination. But he examined Priyavrat PW2, who is the Numberdar of the village and also another witness as PW3. The plaintiff has also placed on record Ex.P.1 site plan of the place. After considering the evidence of the plaintiff, the suit filed by the plaintiff was dismissed. The plaintiff preferred the appeal before the Lower Appellate Court. However, the appeal filed by the plaintiff was also dismissed. Hence, the present appeal has been preferred.

While arguing the case, learned counsel for the appellant has submitted that the plaintiff has duly proved his case before the Courts below. Hence, the suit has wrongly been dismissed by both the Courts below.

Having heard the learned counsel for the plaintiff/ appellant and having considered the material on record, this Court does not find any substance in the argument of the counsel. It is not even in dispute that the plaintiff had not appeared for cross-examination, to substantiate the averments made in the plaint. Therefore, on this ground only, his suit is

bound to fail. Still further, although the plaintiff has examined PW2 and PW3, who have deposed that the suit property was joint between the plaintiff and the defendants, however, it has also been stated by them that besides, the present property, there were other properties as well; which were joint between the parties. However, the partition of all such properties has not been sought. So far as the possession is concerned, there is nothing on record to show the exclusive possession of the plaintiff over any part of the suit property. Hence, the plaintiff has rightly been held to be not in possession of the suit property. The suit has rightly been dismissed by the Courts below for the reasons that the suit for partial partition of the properties was not maintainable; even if the claim of the plaintiff qua the property being joint was to be taken as correct.

No other argument was raised.

In view of the above, finding no merit in the appeal, the same is dismissed.

March 02, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No