

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

Sr. No.110

**CM-4365-C-2021 in/and
RSA No.329 of 2021
Date of Decision : October 25, 2021**

Lalit

...Petitioner

Versus

Master Rohit and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Shubham Gupta, Advocate and
Mr. Praween Gupta, Advocate,
for the petitioner.

SUDHIR MITTAL, J. (ORAL)

CM-4365-C-2021

Allowed as prayed for. Copy of the plaint (Annexure A-1) is taken on record. Exemption sought for is also granted.

At oral request, main case is taken on board.

RSA-329-2021

The defendant is in second appeal. A suit for possession by way of partition was filed by the respondents being legal heirs of Sanjay Gupta son of Dayal Chand (deceased brother of the defendant-appellant). The suit has been decreed by the trial Court and appeal filed by the defendant has been dismissed. The suit property is a residential house.

Learned counsel for the appellant has submitted that suit for a declaration alone was not maintainable in view of Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as the Act) as the plaintiffs had given up possession. Thus, the Courts below were in error in decreeing the suit.

A perusal of the judgments of the Courts below shows that there is no finding of fact that the plaintiffs-respondents have in fact vacated the suit property. The Courts below have held that assuming that possession has been given up, being co-sharers they are deemed to be in possession.

Copy of the plaint has been produced on record. A perusal thereof shows that relief of declaration of title to the extent of half share in the suit property has been claimed along with a decree for partition by metes and bounds. Thus, the argument that the suit could not have been decreed in view of Section 34 of the Act is fallacious. Section 34 of the Act gives a discretion to a Court to grant declaration of status or right. The discretion is, however, circumscribed with limitation that such a declaration would not be granted if the plaintiff has not sought further relief despite being able to seek the same. That is not the situation in this case. The plaintiffs have sought declaration of title and further relief of partition. Regarding possession, the Courts below have correctly held that a co-sharer need not be in physical possession to maintain a suit for partition. The argument that they have vacated the suit property is without any merit as there is no such finding by the Courts below. It is not the case of the appellant that the findings are perverse or contrary to law.

In view of the above, the appeal has no merit and is dismissed.

October 25, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No