

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

Sr. No.146

RSA No.1117 of 2022(O&M)

Date of Decision: 23.05.2022

Amandeep Singh and Others

.....Appellants

Versus

Swaran Singh and Others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Bhupinder Banga, Advocate
for the appellants.

MEENAKSHI I. MEHTA, J. (ORAL)

Feeling aggrieved by the judgment and the preliminary decree dated 14.05.2019 passed by learned Civil Judge (Junior Division), SBS Nagar (for short, 'the trial Court') whereby the civil suit filed by respondent No.1-plaintiff (here-in-after to be referred as 'the plaintiff') for seeking separate possession of his share in the suit land by way of its partition by metes and bounds, has been decreed as well as by the judgment and decree dated 24.01.2022 handed down by learned Additional District Judge, SBS Nagar (for short 'the Lower Appellate Court') dismissing the appeal as preferred by the appellants-defendants No.1 to 6 (here-in-after to be referred as 'the defendants') to lay challenge to the afore-said judgment and decree as passed by the trial Court, they (defendants) have filed the instant appeal.

2. The plaintiff filed the above-said civil suit for seeking partition

of the suit land while averring that he was the owner of 1/3rd share in the same and was in possession over a portion thereof, marked as ABCD in the site plan annexed with the plaint. The defendants contested the claim of the plaintiff by asserting that the suit land had been partitioned long back in the year 1985 and thereafter, they had raised construction over its portion, as had fallen to their share. In his replication, the plaintiff reiterated his earlier version as canvassed in the plaint besides controverting the assertions as put forth by the defendants in their written statement.

3. The parties were put to the trial by framing the issues. They led their evidence, oral as well as documentary, in support of their respective contentions and after appreciating and evaluating their evidence and hearing their learned counsel, the trial Court passed the impugned preliminary decree vide the judgment dated 14.05.2019. The appeal preferred by the defendants to assail the above-said judgment and decree also ended in its dismissal.

4. I have heard learned counsel for the appellants-defendants in the present appeal and have also perused the file carefully.

5. Learned counsel for the defendants contends that the suit land has already been partitioned amongst the co-sharers way back in the year 1985, in the presence of the respectables of the village and since then, the defendants are continuing in possession over the specific portion of the same which had fallen to their share in the afore-said partition and it being so, the civil suit was not maintainable but both the Courts below fell in error in ignoring the above-said fact and have erroneously passed the impugned

judgments and decrees which are not legally sustainable and hence, the same deserve to be set-aside.

6. However, I do not find the above-raised contentions to be tenable because in para No.13 of its judgment, the Lower Appellate Court has observed that Pavittar Singh, i.e. DW2, the attorney of appellant (defendant) Amandeep Singh, had categorically deposed during his cross-examination that he was not in possession of any writing regarding the partition of the suit land amongst the co-sharers. It being so, mere assertions of the defendants regarding any partition of suit land having taken place, can not be given any weightage because had the suit land been so partitioned, the entry qua this fact would have certainly been got incorporated by the parties in the relevant revenue record but however, a perusal of the impugned judgments suggests that the defendants have not led any evidence on the record to this effect.

7. In view of the fore-going discussion, this Court is of the considered opinion that the impugned judgments and decrees passed by both the Courts below, do not suffer from any illegality, irregularity, infirmity or perversity so as to call for any interference by this Court. Resultantly, the same are upheld and affirmed and the appeal in hand, being sans any merit, stands dismissed.

23rd May, 2022

Shivani Kaushik

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No