

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.1501 of 2022 (O&M)

Reserved on : 27.03.2023

Date of Decision : 11.04.2023

Dalvir Singh

....Appellant

VERSUS

Janak Raj

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.S. Jugait, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant against the concurrent findings recorded by both the Courts below. The Trial Court vide judgment and decree dated 13.02.2017 had decreed the suit of the plaintiff-respondent by passing a preliminary decree in favour of the plaintiff-respondent to the effect that the plaintiff-respondent and the defendant-appellant are entitled to half share each in the suit property. Aggrieved by the same, an appeal was preferred by the defendant-appellant, which has also been dismissed vide judgment and decree dated 10.03.2022 by the First Appellate Court. Hence, the present regular second appeal.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for partition of half share out of joint *abadi* property measuring 01 *kanal* 0 *marla* described in detail in the plaint. The suit was contested by the defendant-appellant on the ground that two *Khatauni* Nos.153 and 154 have been carved out and hence the property was not joint between the parties and that it already stood partitioned. Replication was filed reiterating the contents of the plaint and controverting those of the written statement.

From the pleadings of the parties, the following issues were framed by the Trial Court :

1. Whether plaintiff is entitled for separation of his $\frac{1}{2}$ share by way of partition, as prayed for ? OPP
2. Whether suit is not maintainable in the present form ? OPD
3. Relief.

The Trial Court, holding that there was no evidence qua partition, decreed the suit vide judgment and decree dated 13.02.2017. Aggrieved by the same, an appeal was preferred by the defendant-appellant which was dismissed by the First Appellate Court vide judgment and decree dated 10.03.2022.

Learned counsel for the defendant-appellant would contend that the judgments and decrees of the Courts below are illegal and the suit for partition ought to have been dismissed. It is submitted that since separate *khataunis* have been carved out, it was apparent that the suit property was already partitioned and was not joint between the parties. It is submitted that the parties were in exclusive possession of their shares and the suit deserved to be dismissed.

I have heard learned counsel for the defendant-appellant.

Both the Courts below have concurrently found that there was no evidence on the record that the suit property had already been partitioned. There is no mention of any partition in the revenue record. The argument of learned counsel for the defendant-appellant that since separate *Khatauni* Nos.153 and 154 have been carved out, hence, the suit property was not joint between the parties, deserves to be rejected in the absence of any entries in

the revenue record depicting that any partition had taken place between the parties. Further, the defendant-appellant in his cross-examination has admitted that the suit property has not been partitioned by any competent authority. There is no evidence available on the record regarding the incorporation of any partition in the revenue record. In the absence of any evidence depicting that the partition having taken place, I do not find any ground to interfere with the concurrent findings returned by both the Courts below.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

11.04.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO