

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

104.

RSA-4341-2018 (O&M)**Date of Decision : May 07, 2024**

Piara Singh

.... Appellant

vs.

Jangir Kaur and Ors

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

* * *

Present : Mr. Ishmeet Singh, Advocate for
Mr. S.K.Singla, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. The instant appeal has been filed by the defendant against the concurrent findings of the Courts below, whereby suit filed by the plaintiff/respondents has been decreed.

2. The parties are being addressed as per the original suit.

3. The brief facts, necessary for proper adjudication of the present appeal, are that the plaintiffs are co-owner and in joint possession of land measuring 2 kanal 4 marla is Gair Mumkin Abadi and Ruri and owner of $\frac{1}{2}$ share out of 2 kanal 4 marla. The suit land has not been partitioned between the plaintiffs and defendants. The plaintiffs are unable to get full benefits of their entire share and many times they requested the defendants to partition the suit property and to deliver separate possession of their share in suit land i.e. Gair Mumkin Abadi and ruri. Co-sharer Jagtar Singh has already died, unmarried and issueless. The mother of Jagtar Singh-plaintiff No.1, being



legal heir, is entitled to get his inheritance and after getting the share of Jagtar Singh, the plaintiffs have become owner of $\frac{1}{2}$ share i.e. 1 karnal 2 marla out of the suit property.

3.1 Upon notice, defendant no.2-Amarjit Kaur failed to appear and hence, was proceeded against ex-parte. Defendant no.1 contested the suit by filing written statement, submitting therein that suit land was orally partitioned at the time of consolidation and the entire land was fallen in share of defendant No.1. Maghar Singh who was brother of answering defendant was given the residential house which is within the lal lakir of village wherein plaintiffs who are predecessor-in-interest of Maghar Singh are residing at present. The plaintiffs were neither owner nor in possession of any portion of the suit land. Preliminary objections of maintainability, locus standi, cause of action, concealment of material facts and court fee etc. by defendant No.1 were also taken.

3.2 After framing the issues, plaintiffs led their respective evidence. On the other hand, defendant had not examined any witness and evidence of defendant was closed by order. The suit of the plaintiffs was decreed by learned Trial Court vide judgment and decree dated 10.03.2016.

3.3 Aggrieved against the aforesaid judgment and decree, defendant preferred an appeal before the learned Lower Appellate Court, wherein the Court specifically observed that the defendant had tried to make out a case that he could not adduce evidence due to death of his son-in-law but no application under Order 41 Rule 27 read with Section 151 CPC was filed by the defendant. Learned Lower Appellate Court was of the view that



sufficient opportunities were granted to the defendant to adduce his evidence.

3.4 In the circumstances described above, learned Lower Appellate Court observed that there was nothing to differ with the findings of the learned Trial Court. So, affirming the findings of learned Trial Court, appeal of the defendant was dismissed by learned Lower Appellate Court vide judgment and decree dated 22.03.2018.

4. Learned counsel for the appellant-defendant has contended that both the Courts below have erred while passing the judgments and decrees. The appellant has not been granted sufficient opportunities to lead the evidence. On the date of passing of order by learned trial Court, appellant could not appear due to death of his son-in-law whereas the lower Appellate Court failed to consider the site plan placed on record by the appellant to show the residential house which is in possession of the plaintiffs-respondents, and therefore, the judgments and decrees passed by both the Courts below are liable to be set aside.

5. I have heard learned counsel for the appellant and perused the case file.

6. It is the case of appellant-defendant that suit is filed for partition. Both the parties are co-sharers of the suit property. The defendant took a plea that oral partition had taken place and it is on that basis, he is in exclusive possession of the suit land. Defendant neither examined any witness nor any document has been produced on record that suit property was partitioned orally. In the absence of any evidence, the Courts below



have rightly held that parties are co-sharers and the plaintiffs are entitled for separate possession by way of partition.

7. Nothing has been shown that the findings recorded by both the courts below suffer from any infirmity or are contrary to the record. No question of law, much less any substantial question of law, arises in the present appeal, which is accordingly dismissed in limine.

8. Pending application, if any, shall stand disposed of along with this judgment.

May 07, 2024
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(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>