



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

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**RSA No.1265 of 2020 (O&M)
Reserved on : 12.12.2024
Date of Decision : 17.12.2024**

Amar Nath & Anr.

....Appellants

VERSUS

Chet Ram (since deceased) through LRs & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Sushmeet Kaur, Advocate for
Mr. Rajiv Kataria, Advocate for the appellants.

ALKA SARIN, J.

CM-3804-C-2020

1. For the reasons mentioned therein, the application for condonation of 237 days delay in refiling the appeal is allowed.

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2. The present appeal has been preferred by the plaintiff-appellants against the judgment and decree dated 15.03.2016 passed by the Trial Court and the judgment and decree dated 17.09.2018 passed by the First Appellate Court dismissing the suit filed by the plaintiff-appellants.

3. The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for partition of the suit land averring that the parties are co-sharers and that the suit land had not been partitioned so far. The plaintiff-appellants have 1/3rd share but they are unable to use their share without getting the same partitioned. The defendant-respondents had assured to give the possession of the suit land to the extent of the share of the

plaintiff-appellants but had now refused. Hence, the suit. The defendant-respondent No.1(a) filed his written statement taking the stand that the suit was not maintainable as samadhis of their ancestors are existing on the suit land and therefore the suit land was not partible. There was a temple of God Shiva and samadhis of ancestors on the suit land and that digging or raising construction on the same was religiously and socially banned. It was further stated that the joint property had already been partitioned by the parties and all the parties are residing separately. The defendant-respondent Nos.2, 3, 6 and 7 in their written statement raised preliminary objections regarding maintainability, concealment of material facts, property being already partitioned, etc. On merits it was stated that the suit land was the common property of the ancestors of the parties and had been partitioned about 40 years ago. All the parties were in possession of their respective shares and the suit land was kept common for the purpose of temple and samadhi etc. and it was decided by the ancestors of the parties that the suit land will not be partitioned in future. Defendant-respondent No.9 in his written statement stated that he had no objection to the suit land being partitioned. In the replication the contents of the written statements were denied and those of the plaintiff were reiterated.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the suit property is joint ? OPP
2. Whether plaintiffs have 1/3rd share in the suit property ? OPP
3. Whether there is non-joinder of necessary parties ?

OPD

4. Whether suit is not maintainable for not joining of the common properties ? OPD

5. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 15.03.2016. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree 17.09.2018. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellants has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellants. It is submitted that it was fully proven on the record that the suit land was joint between the parties and therefore the plaintiff-appellants were entitled to get the same partitioned and enjoy their share. It is urged that there was no well and temple on the suit land but were outside it and that the suit land was open land with some chabutras on it. As per counsel the impugned judgements and decrees are based upon conjectures and surmises and cannot be sustained.

7. I have heard learned counsel for the plaintiff-appellants.

8. Both the Courts have reached concurrent findings of fact that there is a temple existing on the suit land and therefore the suit land cannot be partitioned. The First Appellate Court found that *“Though both the appellants while appearing as PW-3 and PW-5 denied that the disputed property was left joint for religious purposes but it was admitted by both of them that a temple was existing over this property. PW-3 even stated that this temple was so existing there even prior to his birth. Though in the site plan Ex.PW-3/B this temple was shown to be existing to the exclusion to the*

disputed property but in view of the admission so made by PW-3 and PW-5, it stands proved that a temple is existing in this property. PW-1 Ram Kumar also stated that a temple was existing in this property since long and even beyond his remembrance". The existence of smadhis on the suit land was also accepted by both the Courts. Further, the defendant-respondents had successfully established before both the Courts that the joint property, except for the suit land, already stood partitioned and that the parties were in possession of their respective shares. Further, Section 112 of the Punjab Land Revenue Act, 1887 provides that "*places of worship and burial grounds held in common before partition shall continue to be so held after partition, unless the parties otherwise agree among themselves and record their agreement and file it with the Revenue-officer*". Learned counsel for the plaintiff-appellants has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No cogent and reliable evidence has been pointed out to convince this Court to take a divergent view from the one taken by both the Courts. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.12.2024
Aman Jain

(ALKA SARIN)
JUDGE

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