



RSA-535-1993

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

(104)

RSA-535-1993

Date of decision:- 21.01.2025

Ram Chander and another**...Appellants****Versus****Smt. Chhoto Devi and others****...Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Ranjit Saini, Advocate, for the appellants.

Respondents No.1 to 9 proceeded against ex parte vide order dated 18.11.2022.

None for respondents No.10 to 12.

SUVIR SEHGAL, J. (Oral)

1. Appellants-plaintiffs are in second appeal assailing the concurrent finding recorded by two Courts.
2. Pleaded case of the plaintiffs is that they are owners of 1/10th share of the suit property situated in village Kumbha, Tehsil Hansi, District Hisar. Claiming that the land is gair-mumkin abadi, plaintiffs requested the defendants to get the suit property partitioned, but they refused. Plaintiffs filed the suit for possession of the property by way of partition. Upon notice, defendants No.1 to 9, were proceeded against ex parte, and defendants No.10 to 13, appeared and contested the suit by filing a written statement raising various preliminary objections. On merits, it was averred that the suit land and other joint property had been partitioned about 38 years ago. According to the partition scheme, plaintiffs and the defendants are in possession of their respective shares and have constructed their houses. The said defendants also claimed ownership over



the property by way of adverse possession. Plaintiffs filed a replication reasserting their stand. Issues were framed on the basis of the pleadings of the parties, who led evidence in support of their respective stand. After contest, suit was dismissed by the Trial Court by judgment and decree dated 18.12.1990, which was upheld in appeal filed by the plaintiffs by judgment dated 04.08.1992. Plaintiffs are in second appeal before this Court in the above background.

3. Counsel for the appellants has urged that the Courts have not appreciated the testimony of the plaintiff, which has remained unrebutted. In their evidence, respondents have admitted that the land has not been partitioned and the Courts have erred in dismissing the suit filed by the appellants-plaintiffs.

4. I have heard counsel for the appellants and considered his submission besides examining the requisitioned record with his able assistance.

5. While dismissing the suit filed by the appellants-plaintiffs, both the Courts have relied upon the ocular testimony adduced by the parties to come to the conclusion that the suit property stands partitioned and both the parties have constructed their houses in their respective shares. Particular reference has been made to the testimony of Ram Chander, PW-1, to come to the conclusion that the suit property was partitioned about 30 years ago. However, the case set up by the appellants-plaintiffs is entirely different. Plaintiff had asserted in his deposition that the suit land has not been partitioned. The translated extract of the statement of the plaintiff, as reproduced by the appellants in their

Memorandum of grounds, reads as under:-



“PW-1 - Ram Chander s/o Goma, age 40 years, Agriculturist.
That my father was known by two names, i.e., Sher Singh and Goma. I and my brother are owners in possession of half share of the property in dispute, whereas the remaining half share is owned and possessed by the defendants. No partition has taken place till date. The property may be partitioned. I hereby tender jamabandi, Ex. P-1, kasra girdawari, Ex. P-2, and copy of sizra Ex. P-3.”

6. It is evident from examination-in-chief of the plaintiff that his consistent stand is that the property has not been partitioned. The Court has, therefore, clearly erred in failing to appreciate his deposition. Respondents have failed to produce any documentary evidence and they have not come forward to render any assistance to this Court. This Court, therefore, has no option but to send the matter back to the first appellate Court to re-appreciate the evidence led by the parties.
7. As a consequence, judgment and decree dated 04.08.1992, passed by the First Appellate Court, is set aside. Matter is remitted to the learned District Judge, Hisar, for redetermination of the controversy, on merits.
8. Appeal is disposed off.
9. Parties are directed to appear before the learned District and Sessions Judge, Hisar, on 17.03.2025, who may hear and decide the appeal himself or assign it to any other Court of competent jurisdiction.

(SUVIR SEHGAL)
JUDGE

21.01.2025
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes/No