

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

Decided on: 25.05.2016

1. RSA No.4157 of 2005 (O&M)

Rita Rani	Versus	Appellant
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Ajay Kumar and others		Respondents
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2. RSA No.3748 of 2005 (O&M)

Asha Rani	Versus	Appellant
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Ajay Kumar and others		Respondents
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CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kawaljyot Singh, Advocate
for the appellant (in RSA No.4157 of 2005)

Mr. Keshav Partap Singh, Advocate
for the appellant (in RSA No.3748 of 2005)

Mr. Akshay Bhan, Sr. Advocate
with Mr. Santosh Sharma, Advocate
for respondents No.1 to 3
(in RSA Nos.4157 and 3748 of 2005)

REKHA MITTAL J.

This order will dispose of RSA Nos.4157 and 3748 of 2005 as they have emerged out of the same judgment and decree dated 02.08.2005 passed by the Additional District Judge, Nawanshahar. For brevity, facts are taken from RSA No.4157 of 2005.

Ajay Kumar and others filed a suit for partition of joint property depicted in Red and marked by letters ABCD in the site plan, detailed in the headnote of the plaint. The suit filed by the plaintiffs was dismissed by the trial Court vide judgment and decree dated 22.03.2002

passed by the Additional Civil Judge (Sr. Division), Balachaur.

The unsuccessful plaintiffs/respondents carried the matter in appeal that came to be decided by the Appellate Court whereby the judgment and decree passed by the trial Court was set-aside, findings recorded by the trial Court on Issue No.1 are reversed, suit filed by the plaintiffs (appellants therein) has been decreed and a preliminary decree was passed in the following terms:-

“Appellants No.1 to 4 have jointly got 1/8th share in the property in dispute and appellant No.5 alone has got 1/8th share in the property in dispute.”

Counsel for the appellant has submitted that though the Court in appeal has determined share of the appellants but there is no finding in regard to share of the defendants including Rita Rani – appellant/defendant No.12. It is further submitted that for the purpose of deciding the question of partition of joint land or for that matter passing a preliminary decree of partition, the Court is obligated to determine shareholding of each of the joint owners. It is further submitted that even some of the joint owners/co-sharers in the property in question were not impleaded as parties, therefore, the question with regard to share of joint owners cannot be decided completely and effectively, in their absence.

Counsel for the respondents/plaintiffs, on the contrary, would urge that as Rita Rani – appellant has claimed ownership to the extent of 08 marlas of land and Asha Rani – appellant has claimed 17 marlas of land purported to be purchased by them by way of separate

sale deeds, there was no requirement to specify their shares in the decree passed by the Court in appeal.

I have heard counsel for the parties, perused the paperbook and the original records of the trial Court.

Be that as it may, there cannot be any dispute about the settled position in law that to decide the question of partition of joint property, all the shareholders/co-owners must be impleaded as parties in the proceedings. Equally settled is that at the time of deciding the question of entitlement of the plaintiffs to seek separate possession by way of partition of joint property, the Court is enjoined upon to decide the extent of share of each of the co-owners.

Admittedly, suit filed by the plaintiffs was dismissed by the learned trial Court but the judgment was reversed in appeal with the observations that findings recorded by the trial Court on Issue No.1 are erroneous and has resultantly caused miscarriage of justice. The First Appellate Court has determined share of the plaintiffs only with the observations that plaintiffs No.1 to 4 have 1/8th share (jointly) and plaintiff No.5 should be entitled to 1/8th share in the suit property. However, the Court has not determined the share of defendants No.1 to 12.

Keeping in view the fact that the Appellate Court has not determined share of the defendants, the judgment passed by the Appellate Court cannot be allowed to sustain and accordingly set-aside. The matter is remitted to the Appellate Court for decision of the appeal afresh. However, it would be open for the appellant(s) to raise all

available pleas before the Court in appeal.

In view of what has been discussed hereinabove, the appeals are allowed, the judgment and decree dated 02.08.2005 is set-aside and the matter is remitted to the First Appellate Court for decision of the appeal afresh after hearing the parties, in accordance with law. The parties through their counsel are directed to appear before the Appellate Court on 14.07.2016. The Appellate Court shall dispose of the appeal within a period of 03 months from the date of parties putting in appearance.

(REKHA MITTAL)
JUDGE

25.05.2016

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