

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

(1) Regular Second Appeal No.3611 of 2010 (O&M)

Durga Devi

..... Appellant

Versus

Krishan Kumar and others

..... Respondents

(2) Regular Second Appeal No.3658 of 2010 (O&M)

Pawan Kumar and others

..... Appellants

Versus

Durga Devi and others

..... Respondents

Date of Decision: 09.10.2017

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Hemant Bassi, Advocate
for the appellant/plaintiff (in RSA No.3611 of 2010) and
for respondent No.1 (in RSA No.3658 of 2010).

Mr. R.S.Randhwa, Advocate
for the appellants/defendants (in RSA No.3658 of 2010) and
for respondent/defendants Nos.1, 2, 4, 6 and 8 to 10
(in RSA No.3611 of 2010).

Mr. T.S.Chauhan and Mr. Satnam Chauhan, Advocates
for respondent No.5/defendant (in RSA No.3611 of 2010) and
for respondent No.3/defendant (in RSA No.3658 of 2010).

None for the remaining respondents.

JASWANT SINGH, J. (Oral)

This common order shall dispose of both the aforesaid regular
second appeals as they emerge out of the common decrees to the suit, filed
by plaintiff-Durga Devi, against her defendant brothers and sisters.

In short, Banarsi Dass had four sons, namely, Krishan Kumar, Madan Lal, Mohan Lal and Pawan Kumar (defendant Nos.1 to 4) and two daughters, namely, Durga Devi (plaintiff) and Darshana Devi (defendant No.5). Plaintiff-Durga Devi filed a suit for declaration that she is owner in possession of 1/6th share in the four stated properties with consequential relief for partition by meets and bounds. Three properties **(i)** Shop-cum-Residence bearing No.85/3 (527); **(ii)** House No.89/3(531), both situated in Ward No.17, Mandi Dabwali, District Sirsa; **(iii)** House No.729 measuring 52' x 118' (4 Biswas) and **(iv)** a house situated just opposite to House No.729, both situated in Village Killianwali, Tehsil Malout, District Muktsar. The plaintiff asserted that the properties described at **(i)**, **(iii)** and **(iv)** were recorded in the joint ownership of the *Karta*- Banarsi Dass being the ancestral or purchased out of the joint funds, whereas the property described at **(ii)** was although recorded in favour of other defendants, who are daughter-in-law and grand-sons of Banarsi Dass but was purchased out of the joint funds of the H.U.F. of Banarsi Dass and, therefore, her 1/6th share in the entire properties had to be recognized and partitioned.

Learned Civil Judge (Jr. Divn.), Dabwali, vide judgment and decree dated 17.08.2007, partly decreed the suit in favour of the plaintiff and against the defendants, while passing a preliminary decree to the effect that plaintiff-Durga Devi was owner in possession of the suit properties except property at **(ii)** to the extent of 1/6th share by way of partition by meets and bounds.

Two appeals were filed against the aforesaid decree, passed by the trial Court, one by defendant Nos.1, 2 and 4 i.e. Krishan Kumar, Madan

declaration of the property at **(ii)** as well. The lower Appellate Court i.e. Additional District Judge (Fast Track Court), Sirsa, on reevaluation of the evidence, rejected the claim of the plaintiff/appellant-Durga Devi qua aforesaid property at **(ii)**, while partly accepting the claim of the defendants/appellants qua the aforesaid properties at **(i)** and **(iv)**, by holding that plaintiff-Durga Devi had no share in the two said properties. However, inadvertently, while passing two decrees of even date i.e. 21.12.2009, it was wrongly recorded that the appeal of the plaintiff is partly accepted while dismissing the appeal of the defendants/appellants. Hence, the present two appeals out of the aforesaid two lower Court decrees.

Since the parties were family members, they were referred to the Mediation and Conciliation Centre of this Court, however, the mediation efforts have since failed.

During the course of hearing of the appeals, it was noticed that in the initial decree dated 17.08.2007, passed by the trial Court, the description of the property at **(ii)** has been wrongly described as “House No.89/3(513)” instead of correct description being House No.89/3 (531). Even the decrees passed by the lower Appellate Court were noticed to have been wrongly recorded, contrary to the reasoning adopted in the judgment.

Learned Counsel for the parties are thus agreed that the matter be remanded back to the lower Appellate Court for reframing of the decrees and also enabling the parties to seek the correction of the initial decree passed by the trial Court.

In view of the aforesaid agreed stand, both the present appeals are allowed to the extent that both the decrees dated 21.12.2009, passed by the lower Appellate Court are set aside and the matter is remanded back to

the stage of passing of fresh decree(s).

The parties to appear before the lower Appellate Court concerned on **29.11.2017**.

Disposed of in the above terms.

October 09, 2017
Gagan

(JASWANT SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>