

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

RSA No.4464 of 2016 (O&M)

Date of decision : 15.05.2018

Raj Rani and another

...Appellants

Versus

Jai Bhagwan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. N.D. Achint, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.11644-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 days in refiling the appeal is condoned.

Application is allowed.

CM No.11645-C of 2016

Application is allowed.

Exemption, as prayed for, is granted.

CM No.11647-C of 2016

Application is allowed.

Leave to appeal on behalf of appellant No.2 is allowed.

Main case

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs had filed a suit for permanent injunction whereas the defendants filed a counter claim claiming the partition of the property. Originally the property was owned by Sh. Deep Chand, predecessor-in-interest of defendant Nos.1 and 2. Deep Chand left behind four legal heirs namely Prakash Devi, Usha Jain, Santosh and Raj Rani. Usha Jain was declared owner of the share of Santosh and Prakash Devi vide Civil Court decree dated 22.04.1995. Thereafter, Usha Jain sold her share, which had become $\frac{3}{4}$ th after the Civil Court decree, to the plaintiffs vide sale deed dated 04.08.2009.

The defendants contested the suit and pleaded that the property had devolved upon Usha Jain, Raj Rani and Rekha Rani daughter of Santosh, whereas Rekha Rani had sold her share to Raj Rani.

Learned trial Court after appreciating the evidence available on the file recorded a finding that Usha Jain had become owner of $\frac{3}{4}$ th share after the Civil Court decree passed on 22.04.1995 and, therefore, the sale of $\frac{3}{4}$ th share in favour of the plaintiffs is valid and the claim of the defendant that she is owner of more than $\frac{1}{4}$ th share was rejected.

Learned trial Court passed a preliminary decree for partition of the property declaring the parties to be the owner of $\frac{3}{4}$ th (plaintiffs) and $\frac{1}{4}$ th (Raj Rani).

An appeal filed before the First Appellate Court as also the cross-objections were dismissed.

This Court has heard the learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants has made a sincere attempt to persuade the Court to take a different view than what has been arrived at by the Courts below. However, in the absence of any substantive misreading or non-reading of the evidence, this Court does not have jurisdiction to interfere in the concurrent findings of fact.

In view thereof, there is no scope for interference.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

15.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No