

RSA No. 5878 of 2016 (O&M)

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

**RSA No. 5878 of 2016 (O&M)
Date of decision: 28.5.2018**

Krishan Kumar

... Appellant

Versus

Ashok Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: None.

ARUN PALLI, J. (Oral)

Vide judgment and decree dated 19.11.2014, an application moved by respondent No.1-plaintiff, for passing the final decree, had since been allowed. As the appeal preferred against the said decree by appellant-defendant No.2 failed, and was dismissed on 2.7.2016, he is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Briefly, the suit property is a residential house, measuring 15'x60'. A preliminary decree dated 26.2.2010, for partition of the suit property, had since been passed in which there were four co-sharers. Concededly, the plaintiff was entitled to 1/4th share, and defendants No. 4 and 5 too had inherited 1/4th share each therein. Admittedly, the front portion of the suit property was 15' in width. Therefore, in the event of any partition by metes and bounds, it would not have been feasible for the co-sharers to enjoy the suit property, as the dimension of each portion would be

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3'9"x60'. Therefore, even the Local Commissioner appointed by the Court suggested that it, indeed, would be difficult to partition the house.

On a consideration of the matter in issue and the evidence on record, it was ordered by the trial court that let the suit property be sold and the sale proceeds be distributed among the parties, as per their shares determined in the preliminary decree. Accordingly, the application was allowed and the final decree was ordered to be prepared. The plea as regards the validity of the preliminary decree was rejected, as the appellate court held that in the event, any of the parties had a grievance against the preliminary decree, the party aggrieved could assail the said decree by initiating appropriate proceedings. For, the validity of the said decree could not be questioned or gone into in the present proceedings. Likewise, the argument that defendant No.2 owned no other accommodation, except the house in question, therefore, the same ought not to have been subjected to sale, was also rejected. For the appellant was a co-sharer and so were others, who too had an equal right in the suit property. Since the only option to partition the suit property was by sale, the prayer of the appellant could not be countenanced.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

28.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO