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

**RSA-1042-2017 (O&M)
Date of decision : 07.12.2018**

Sohan Lal

... Appellant

Versus

Manohar Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manoj Kumar Sood, Advocate
for the applicant/appellant.

AMIT RAWAL, J.

CM-18077-C-2018

Prayer in the application is for preponing the hearing of the appeal as the trial Court is seized of the execution application for preparation of the final decree, which is slated for today i.e. 07.12.2018.

For the reasons stated in the application, the application is allowed and the hearing of the appeal is preponed from 17.01.2019 to today itself.

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The present regular second appeal is directed against the judgment and decree of the Courts below, whereby the suit of the appellant-plaintiff for partition and permanent injunction in respect of two properties i.e. House No.5H/7, NIT, Faridabad, measuring 296 sq. yds. and a land measuring 65 sq. yds., has partly been decreed by the trial Court and

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affirmed in appeal.

The trial Court granted the partition with regard to 296 sq. yds, but denied in respect of 65 sq. yds and 1/4th share in favour of Manohar Lal/defendant No.1 was relinquished.

Learned counsel appearing on behalf of the appellant-plaintiff, during the course of hearing, has drawn the attention of this Court to the averments made in the plaint (Ex.P1) filed by Manohar Lal, wherein paragraph Nos.1 and 4 were written as under:-

"1. That the plaintiff is owner and in possession of the area consisting part of House No.5-H/7, NIT, Faridabad out of the total area measuring 65 Sq. Yards of house, eastern and western walls admeasuring 15'7", Northern Wall 12'2" and southern side wall 9" which is marked by the letters ABCD and shown in red colour and is bounded as under:-

4. That on 20.12.2002, family settlement took place between the plaintiff and the defendants vide which the defendants relinquished and abandoned 1/4th share in the suit property in favour of the plaintiff and since then plaintiff is absolute owner and is in actual physical possession of the suit property mentioned in para No.1 of the plaint"

By making the calculation of the descriptions of the property, it was submitted that the trial Court could not have declined the partition of 65 sq. yds., as it comes to 18.32 sq. yds. This fact has not been noticed by the Courts below, thus, there is gross illegality and perversity.

I have heard learned counsel for the appellant-plaintiff and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sood, for, no doubt in the present suit, the area of the house No.5H-7, NIT, Faridabad, has been shown as 296 sq. yds.,

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whereas regarding land measuring 65 sq. yds., is stated to be adjacent. The argument that even 65 sq. yds. was also given a number of 5H-7. On going through the sale deed shown to this Court, during the course of hearing, it was mentioned as adjacent to house No.5H/7. Be that as it may, the calculation which is attempted to be given for the first time to this Court, cannot be ground for interference in the preliminary decree, for, concededly the appellant, who was defendant No.1 in the suit along with his brother Nanak Chand and the children of deceased brother Jagat Ram, had relinquished the share in favour of Manohar Lal. It is an attempt to rake up the issue again.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**