

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

**RSA No.3729 of 2017 (O&M)
Date of decision : April 18, 2018**

Vinod Kumar

..... Appellant

Versus

Ashok Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vishwajit Bedi, Advocate for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CM-9109-C-2017

There is delay of 109 days in re-filing the present appeal.

For the reasons mentioned in the application, delay of 109 days in re-filing the present appeal is condoned, subject to all just exception.

Application stands disposed of.

Main Case

Impugned in the present regular second appeal is the judgment dated 08.11.2016 passed by learned Addl. District Judge, Ludhiana, affirming the judgment and decree dated 19.10.2015 passed by learned Civil Judge (Jr. Divn.), Ludhiana, vide which a preliminary decree was passed to the effect that the suit property is to be partitioned between plaintiffs and defendants by metes and bounds within the period of six months as per their respective shares.

I have learned counsel for the appellant and have also carefully gone through the case file.

Admittedly, the parties are co-sharers. Only a preliminary decree has been passed, declaring the shares of the parties. The shares of the parties are otherwise not denied.

Learned counsel for the appellant has argued that no prayer for seeking possession was made. Therefore, the mere suit for partitioned by metes and bounds is not maintainable.

I am of the view that at the first instance, it is only a preliminary decree, declaring the shares of the parties. It is only in the application for passing a final decree that the prayer of possession is required to be made. Moreover, in the prayer clause, the plaintiffs had clearly mentioned that any other additional or alternative relief to which he is found entitled, be also granted.

As such, the preliminary decree cannot be set aside, merely on the ground that in the suit, no prayer for possession was made. There are concurrent findings recorded by two Courts below. There is no ground to interfere in the same.

Accordingly, the present regular second appeal is dismissed. Since, the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

April 18, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No