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

RSA No.4118 of 2018(O&M)

Date of Decision: 11.09.2018

Manjit Singh

.....Appellant

Versus

Tapinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep K. Sharma, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for the respondent No.1/caveator.

ANIL KSHETARPAL J.(ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the judgment passed by learned First Appellate Court.

Although plaintiff had sought various relief, however, primary relief sought by the plaintiff was suit for declaration to the effect that the plaintiff is owner in possession of land measuring 18 bigha and 3 biswa, out of land measuring 43 bigha and 7 biswa fully described in the plaint. It is the case of plaintiff that after the death of Atma Singh, their father four brother namely Bharpur Singh, Sohan Singh, Mohan Singh and Manjit Singh inherited the property in equal share. Sohan Singh has sold his entire 1/4th share in the property vide sale-deed dated 27.06.1985, in favour of Jagwinder Singh and Sukhdev Singh.

Bharpur Singh, has died who had sold his 1/12th share whereas his half share was succeeded by his widow Balbir Kaur, who sold land measuring 4 bigha and 10 biswa to Mohan Singh and exchanged 4 bighas and 10 biswa with the plaintiff.

Learned Trial Court decreed the suit, whereas the First Appellate Court has reversed the judgment by giving following three reasons:-

1. The jurisdiction of the Civil Court is barred under Section 158 of the Punjab Land Revenue Act, 1887, to challenge the order of partition passed by the Revenue Authorities.
2. The suit is barred by limitation as the partition between various co-sharers took place in the year 1988.
3. All the persons who would be affected by setting aside the partition order, have not been impleaded, therefore the judgment is wrong.

The plaintiff as noticed, had filed a suit primarily for declaration. No doubt indirectly the order of partition has also been challenged. However, First Appellate Court, has not adverted to the issue that whether Sohan Singh, had sold his entire 1/4th share in the property or not vide sale deed dated 27.06.1985 and thereafter, he was left with no right, title or interest in the joint property and his name wrongly continued in the revenue record. This is the fundamental question which is required to be answered because if Sohan Singh had sold his entire share in the joint property and he was wrongly depicted in the revenue record as owner, then of course, any allotment of land in partition in his favour, would be erroneous and fundamentally without jurisdiction. The title of a owner cannot be taken away merely because a partition of the property had been ordered by the revenue authorities. So, the

fundamental question which is required to be answered, has not been answered.

In this view of the matter, this Court without further deliberating upon the reasons given by the learned First Appellate Court, lest, it may prejudice interest of any of the party, is of the view that the judgment under appeal is required to be set aside and the case remitted back to First Appellate Court, to re-decide the matter after answering the fundamental question that whether Sohan Singh, had sold his entire share in the joint property and if yes, whether in the partition proceedings, any land could be allotted to Sohan Singh or not. Needless to say that it shall be open to the party to raise all the arguments before the First Appellate Court.

Parties through their counsels are directed to appear before the First Appellate Court on 26.09.2018.

In view of the above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous application(s), if any, is/are disposed of in terms thereof.

(ANIL KSHETARPAL)
JUDGE

September 11, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No