

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

S.A.O. No. 77 of 2018

Date of decision: 27.11.2018

Radhay Shayam

... Petitioner

Vs.

Smt. Suman and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.P. Sharma, Advocae
for the appellant.

SURINDER GUPTA, J

Heard.

Learned counsel for appellant submits that the plaintiff filed suit seeking partition of plot measuring 1 marla situated in village Sihma, Tehsil Narnaul bearing *khewat No.213, khatoni no.236, khasra no.423(1-0)*.

The trial court dismissed the suit in view of the compromise judgment and decree dated 19.1.1982 and the subsequent suit No. 424 of 1981.

On appeal, the appellate court set aside the judgment and decree passed by the trial court on the ground that in the compromise decree dated 19.1.1982 plaintiffs were not party as such this decree is not binding on them and secondly the other civil suit No. 127 of 1992 in which the plaintiffs were arrayed as respondents no.12 and 13 was dismissed vide judgment and decree dated 5.8.1999. The suit for injunction filed by one of the co-sharer as such does not operate as *res-judicata* to the present suit filed for seeking partition of suit property. With the above observations, the

first appellate court set aside the judgment and decree of the trial court and

remanded the case with direction to hear the arguments afresh and pass preliminary decree determining the shares of the parties.

Admittedly, the judgment and decree in the earlier suit do not take away the share of plaintiffs in the suit property and they continued to be co-owners of the same, as such, direction given by the first appellate court to determine their share and decide the suit filed by them on merits suffers from no legal or factual infirmity calling for interference in this appeal.

Dismissed.

November 27, 2017

deepak

**(Surinder Gupta)
Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No