

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3713 of 2003 (O&M)

Date of decision: 24.01.2019

Barkat (deceased) through LRs and others

..... Appellants

Versus

Sham Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amarjit Markan, Advocate
for the appellants.

Mr. G.S. Bhatia, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the judgments passed by the Courts below while passing a preliminary decree for partition of the property which is part of a developed colony being utilized by the parties to this litigation who are 47 in number. The parties have constructed their houses and residing therein.

Plaintiff-respondent filed a suit for possession by way of partition claiming 1/12th share in the suit property measuring 15 kanals and 3 marlas.

The Courts have carved out the share of the plaintiff to the extent of 494 sq. yards, however, while carving out the share of the plaintiff, the Courts have not taken into consideration the area which has been utilized for carving out streets and the land utilized for various other common purposes because undisputedly a colony has already been carved

out and residential houses have been constructed. Both the Courts have noticed this fact which is not disputed before the Court. Further, rights of the various defendants have also not been determined. Further, the land which has been utilized for common purposes including streets etc. has to be proportionately deducted from share of each co-owner.

Keeping in view the aforesaid facts, the judgments passed by both the Courts below are set aside. Learned trial Court is requested to re-decide the suit after taking into consideration the observations made by this Court.

The trial Court would make a sincere attempt to decide the suit positively, within a period of one year, from the date of receipt of a certified copy of this order.

Needless to observe that all the parties would be granted opportunity to lead further evidence so that it comes on record that how much area has been utilized for common purposes. The Court would also examine the feasibility of sending notices to the other parties who are not represented.

With these observations, the appeal is disposed of.

Parties through their counsel are directed to appear before the trial Court on 11.02.2019.

24.01.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No