

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

**RSA No.1948 of 2000 (O&M)
Date of Order: 01.03.2019**

Jasbir Kaur

..Appellant

Versus

Smt. Lajwanti and others

..Respondents

RSA No.1960 of 2000 (O&M)

Gian Chand and others

...Appellants

Versus

Smt. Lajwanti and others

...Respondents

RSA No.1961 of 2000 (O&M)

Kamla Wati and others

...Appellants

Versus

Smt. Lajwanti and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajaypal Singh Sandhu, Advocate, for
Mr. S.S.Narula, Advocate,
for the appellant(s)

Mr. Harkesh Manuja, Advocate,
for appellant no.8.

Mr. Sanjeev Sharma, Advocate,
for respondents no.1 to 4.

ANIL KSHETARPAL, J(Oral)

Various defendants are in the regular second appeals against the judgments and decrees passed by the courts below while passing preliminary decree for partition of the property.

It has come in evidence as found by the courts below that the

total area partition whereof has been sought is 5 kanals and 2 marlas (equivalent to 102 marlas) comprised in khasra no.1518. Learned trial court has found that the entire property has been developed into a colony and there are two public streets in existence.

Plaintiffs, who are legal heirs of late Sh. Ved Parkash claim that they are owners to the extent of 9 marlas in khasra No.1518. However, on reading of the judgments passed by the courts below, there is apparent error in the judgments.

Learned trial court as well as first appellate court while passing a decree have not taken into consideration the extent of land which has been used for public streets and other common facilities. The land which has been used for public streets or other common facilities has to be proportionately divided and deducted from the share/entitlement of each co-sharer. Still further the partition of the land has to be with reference to khewat/khata and not khasra number. The khasra number itself is not a unit for the purpose of determining co-sharer. It is khewat/khata which determines who are co-sharers in the property.

Learned counsel for the appellant in RSA No.1960 of 2000 has brought to the notice of this court by filing an application under Order 41 Rule 27 CPC, an order passed by the court wherein plaintiffs have given up their claims except Gian Chand, Pushpa Rani, Mool Chand, respondent no.10 Harinder Singh and Kailash Kaur. Once everyone is co-sharer then there could not be any giving up of the claim and targeting only few selected defendants.

Any how, this court is not finally opining on correctness of such statement because the case is being remitted back to the learned trial

court to proceed with the case after taking into consideration the aforesaid facts. Accordingly, the judgments and preliminary decrees passed by the courts below are set aside.

Learned trial court is requested to finalize the proceedings for passing preliminary decrees within 6 months from the date of receipt of a certified copy of this judgment.

Needless to say that the learned trial court would decide the case without being influence by the judgments passed previously. Both the parties shall be free to take whatever plea is permissible in accordance with law.

The regular second appeals are disposed of accordingly.

Parties shall be at liberty to move applications for legal heirs/additional evidence before the trial court because the case is being remitted.

Parties through their counsels are directed to appear before the learned trial court on 20.03.2019.

March 01, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No