

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

RSA No.2933 of 2010 (O&M)

Date of Decision:01.03.2019

Bhupinder Pal (deceased) through LRs

...Appellant(s)

Versus

Ms Kiran Bala (deceased) through LRs

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.P.K.Jain, Advocate for the appellant.
Mr.S.S.Majithia, Advocate for the respondent.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, dismissing the suit only on maintainability.

The plaintiff, who is brother, had filed a suit for partition by separate possession against his sister. It was claimed that the property at one point of time belongs to their mother Late Smt.Kaushlaya Devi

The defendant contested the suit and pleaded that she is the sole heir on the basis of testament dated 17.11.1998.

Learned courts, as noticed above, dismissed the suit on the ground that the relief of declaration has not been sought for. A suit for separate possession by way of partition has in built declaration. Once a person is claiming partition on the ground that he/she is co-sharer, there is implicit declaration which has been sought.

Both the courts have relied upon a judgment passed by the Hon'ble Supreme Court in **Anathula Sudhakar Vs P.Buchi Reddy, 2008**

SC 2033. In the aforesaid judgment, the Hon'ble Supreme Court has categorised various types of injunction suits. The aforesaid suit was not dealing with the suit for partition of the property.

In view thereof, the judgments and decrees passed by the courts below are erroneous, to say the least. Hence, the judgments and decrees passed by the courts below are set aside. The case is remitted back to the learned trial court to re-decide the suit on merits. The learned trial court is requested to make a sincere attempt to decide the suit as early as possible preferably within a period of one year, keeping in view the fact that the suit was filed in the year 2005.

The parties through their counsels are directed to appear before the concerned court on 04.04.2019.

01.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No