

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

RSA No.3010 of 2012 (O&M)

Date of decision: 25.02.2019

Mamchand

..... Appellant

Versus

Nathiya and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rohit Mittal, Advocate
for the appellant.

Mr. J.P. Sharma, Advocate
for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff No.1-appellant is in the regular second appeal against the judgment passed by the First Appellate Court.

The plaintiffs, who are successor-in-interest of Ganpat, had filed a suit for possession with respect to the land measuring 5 marlas. The defendants contested the suit and pleaded that the plaintiffs have no concern. Defendant No.1 is a widow of Siri Chand. It was further pleaded that the plaintiffs are residing in Punjab. It was further pleaded that there were three brothers namely Ganpat, Siri Chand and Chhotu Ram. It was pleaded that Chhotu Ram had given up his share and Ganpat was residing in one side.

Learned trial Court on appreciation of evidence dismissed the suit whereas First Appellate Court has decreed the suit with respect to 1/3rd share in the property after finding that there is no evidence that Chhotu

Ram ever gave up his rights. The plaintiff when appeared in evidence has admitted that at the time of consolidation of holdings, his father namely Ganpat being eldest brother in the family was allotted the plot whereas Siri Chand and Chhotu Ram did not get any plot. In the consolidation of holdings, title of two co-owners unless there is evidence to the contrary could not be taken away. The plaintiffs claim to be in the possession of the property. Once the plaintiffs are successor-in-interest of late Sh. Ganpat, therefore, they are entitled to 1/3rd share in the property in dispute.

However, learned First Appellate Court has granted liberty to the plaintiffs to file a suit for partition. In the considered view of this Court, once the plaintiffs have been held entitled to 1/3rd share, the Court should have passed a preliminary decree for partition to avoid further litigation. It will be noted that the defendants have not challenged the judgment. The Courts must mould the relief in such a manner that further litigation is avoided. Although, there is no prayer, however, while moulding the relief, a preliminary decree for partition is passed holding that the plaintiffs are entitled to 1/3rd share in the property. They shall be at liberty to move an application for final decree.

In view thereof, the appeal is disposed of.

The pending miscellaneous application, if any, shall stand disposed of in view of the above-said judgment.

25.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No