

RSA- 3917 of 2013 (O&M)
Date of Decision: 6.11.2019

Shanta Rani and others

---Appellants

versus

Bhupinder Kumar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Harsh Aggarwal, Advocate
for the appellants**

**Mr. R.S.Sidhu, Advocate
for the respondent**

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 1.6.2013 passed by the Additional District Judge, Tarn Taran whereby appeal against judgment and decree dated 11.5.2012 passed by the trial court, was accepted, judgment and decree impugned was set aside and suit filed by the respondent-plaintiff for declaration, partition and permanent injunction was decreed to the effect that preliminary decree is passed in favour of the plaintiff and against the defendants by holding that plaintiff is entitle to get his 1/5th share separated from suit property by way of partition, by metes and bounds.

Counsel for the appellants would argue that trial court while dealing with issues No. 1 to 3, taken up jointly, has recorded findings in para 11 that site plans Ex. P1 and P2 can not be related to the suit property and the same can not be read into evidence. It is further argued that in a suit pertaining to immovable property, it is obligation of the plaintiff to give

correct description of the property with dimension and boundaries etc. in order to establish identity of the property. It is further argued that Appellate court without setting aside findings of the trial court with regard to failure of the respondent-plaintiff to establish identity of the suit property on the basis of site plans Ex. P1 and P2 has allowed the appeal by adverting only to the receipt pressed into service by appellants-defendants to show that respondent-plaintiff has already received payment qua his share in the property stated to be jointly owned by him and defendants, admittedly, previously owned by Sh. Mangat Ram.

Counsel for the parties are ad idem that decree and judgment passed by the First Appellate Court may be set aside and matter be remitted to the Appellate Court for decision of the appeal afresh, in accordance with law.

In view of the above, the appeal is allowed. Decree and judgment passed by the Appellate Court is set aside. The matter is remitted to the Appellate court for decision of the appeal afresh. The appellants would be at liberty to file an appropriate application for framing of additional issues, if any, and same shall be decided by the Appellate Court, in accordance with law. Parties through their counsel are directed to appear before the Appellate Court on 3.12.2019. The Appellate court shall decide the appeal within four months of the parties putting in appearance.

(Rekha Mittal)
Judge

6.11.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No