

**CM No. 15866-C-2018 in/and
RSA No. 3386 of 2014**

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

**CM No. 15866-C-2018 in/and
RSA No. 3386 of 2014
Date of Decision: 01.05.2019**

Rajbir Singh

.....Appellant

Vs.

Smt. Savitri Devi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sudhir Aggarwal, Advocate,
for the applicant-appellant.

Mr. Shiv Kumar, Advocate,
for the non-applicant/respondents.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 15866-C-2018

By this application, the legal representatives of the sole appellant, Rajbir Singh, are sought to be brought on record, he having died on 22.04.2016 as per what is stated in the application, accompanied by the affidavit of one of his sons, who is shown at serial no. (ii) amongst his legal representatives.

Notice in the application.

Mr. Shiv Kumar, learned counsel for the appearing for the non-applicant/respondents accepts notice and does not oppose it.

Consequently, the application is allowed and the four persons whose names are given in paragraph 2 of the application are ordered to be substituted as the LRs of the sole appellant, with the amended memo of parties also ordered to be taken on record.

RSA No. 3386 of 2014

By this appeal, the appellant (now represented by his LRs) who was the defendant in the suit instituted by the respondents herein, impugns the judgments and decrees passed by the learned courts below, decreeing the suit in favour of the respondents, thereby issuing a preliminary decree of partition of the suit property to the extent that the respondents-plaintiffs are joint owners in equal shares (*inter se* each other) to the extent of a 1/3rd share of house no. 45-A, Block-C, Sector 11, DLF Model Town, Faridabad, whereas the appellant-defendant is a joint owner in the said property to the extent of a 2/3rd share, further holding that the parties are entitled to separate possession of their respective shares by way of partition.

Naturally, a final decree as to the mode of partition is still to be drawn up on an application moved for that purpose by the decree-holders, which learned counsel for the appellant submits has been filed.

The learned courts below came to a finding of fact that the respondents had actually purchased the 1/3rd share of Colonel H Sharma in the suit property, he having been a joint-holder to that extent, with the late appellant.

The said finding was recorded on the basis of a registered sale deed duly exhibited before the learned trial Court, and in any case, even as per the stand of the appellant, the factum of Colonel H Sharma being a 1/3rd owner of the suit property, with the appellant being a 2/3rd owner thereof, was not denied.

The stand of the appellant however is that a partition already having taken place between the parties, the suit was not maintainable, it being unnecessary, with he (appellant-defendant) already having constructed upon his 2/3rd share of the property prior to purchase of a 1/3rd share of the property by the

respondents-plaintiffs.

The dispute is therefore obviously only on the mode of partition, which is still to be settled by the trial Court on the application filed by the respondents, seeking a final decree to be issued pursuant to the preliminary decree issued in their favour.

It is to be noticed for the record that it is not denied on either side that the instrument of purchase by which the appellant and Colonel H Sharma had purchased the suit property from the previous owner was not led by way of evidence, but as regards the purchase itself to the extent of the aforesaid shares of each of the purchaser, the appellant has not disputed it.

That being so, I see no reason to interfere with the judgments and decrees issued by the learned courts below, granting a preliminary decree of partition, no formal partition having been proved to have taken place before the learned courts below by way of any documentary evidence led to that effect, with even the witnesses who testified in favour of the appellant-defendant not having been actually able to produce any formal writing in respect of a formal partition.

As regards the apprehension of the appellant to the mode of partition of the suit property, i.e. as to whether any part of the constructed portion would be given to the respondents-plaintiffs, that is a matter to be considered wholly on its own merits by the learned trial Court in the application filed by the respondents herein, seeking such final decree of partition.

Naturally, that court would proceed to decide that issue wholly on the basis of evidence led before it.

With the aforesaid observations, finding no reason to interfere with the impugned judgments and decrees, this appeal is dismissed.

The preliminary decree having been issued about 05 years ago, the trial Court would endeavour to dispose of the application seeking a final decree, very expeditiously.

May 01, 2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes