

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 92 of 2018 (O&M)

Date of Decision: 29.04.2019

Pargat Singh

...Appellant

VERSUS

Baljit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Sirphikhi, Advocate
for the appellant.

Ms. Surabhi Kaushik, Advocate
for Mr. Prateek Mahajan, Advocate
for the respondents.

SURINDER GUPTA, J. (Oral)

Heard.

Plaintiff-respondent no. 1-Baljit Singh filed suit for possession by way of partition of his share in the suit property, which was initially decided vide judgment and decree dated 23.07.2012. Defendants filed appeal against that judgment and decree, which was accepted and the case was remanded to learned trial Court with direction to decide the case afresh after recording finding on issue no. 4-A. Learned trial Court vide judgment dated 18.04.2016 dismissed the suit filed by plaintiff with the observation that suit property had already been orally partitioned and plaintiff was required to pay *ad valorem* court fee on the value of his share in the suit property.

Plaintiff filed appeal wherein it was observed that issue no. 4-A framed by learned trial Court on 18.03.2010 had remained undecided. The issue reads as follows:-

“4-A Whether plaintiff has received the share in the shape of money and have relinquished his rights in the suit

property? OPD”

Ist Appellate Court remanded the case with direction to learned trial Court to record finding on above referred issue and decide the case afresh.

Learned counsel for respondents has no objection if order of remand passed by Ist Appellate Court is modified to the extent that learned trial Court may be directed to record its finding on above issue numbered as '4-A' (there is another issue numbered '4-A' regarding valuation of suit for the purpose of court fee and jurisdiction) and send its report to Ist Appellate Court and Ist Appellate Court may be directed to decide the appeal on merit.

Issue no. 4-A referred above has remained undecided. Parties have led evidence on this issue and there is no occasion to allow the parties to lead any fresh evidence on this issue. The legality and validity of findings on other issues as recorded by learned trial Court is subject matter to be decided by Ist Appellate Court on merit, as such, accepting the submission of learned counsel for the respondents, this appeal is accepted to the extent that trial Court will record its findings on issue no. 4-A as reproduced above and send report to Ist Appellate Court. On receipt of report, Ist Appellate Court will proceed to hear the parties and decide the appeal in accordance with law. Parties are directed to appear before Additional District Judge, Gurdaspur on 25.04.2019, on which date file of Appeal No. 24 of 2016 shall be taken on board and proceeded further in accordance with above observations.

April 29, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No