

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

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RSA-39 of 2021 (O&M)

Date of decision : 26.08.2021

KAHLA SINGH

.....Appellant

Versus

SANTOKH SINGH AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vikram Bali, Advocate
for the appellant.

Mr. Amandeep Singh Saini, Advocate
for the respondents. .

SUDHIR MITTAL, J. (Oral)

The appellant is defendant No. 2. Suit for partition was filed. The same was decreed by the trial Court and the appeal filed there against was dismissed.

Learned counsel for the appellant has argued that suit property measures 17136 sq.ft. but the area partitioned measures 18606 sq. ft. Thus, the order of partition is illegal. Further, the house of the appellant exists on the suit property. The same should have been sold for distribution of the sale proceeds amongst the co-sharers in accordance with their respective shares. This has also not been done.

Perusal of the judgment of the learned lower Appellant Court shows that undoubtedly the area partitioned is more than that mentioned in the plaint. There is, however, no dispute that the entire area partitioned was in possession of the parties and this is evident

from the report of the local commissioner. Thus, the argument based on this issue is rejected.

Regarding the second point, learned counsel for the appellant was asked whether he is in possession of the house constructed by him and whether he has received the area in accordance with his share. The answer is in the affirmative. Thus, there is no illegality if the constructed portion has not been put to sale. The learned lower Appellate Court has held that partition was possible and thus there was no need to put any property to sale. This finding has not been shown to be erroneous.

For the aforementioned reasons, there is no merit in this appeal. The same is accordingly dismissed.

(SUDHIR MITTAL)
JUDGE

26.08.2021

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Whether speaking / reasoned : Yes No

Whether Reportable : Yes No