

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

1.RSA-2025-2013 (O&M)

Ram Partap and others

....Appellants

Versus

Smt. Darsho alias Darshani and others

..Respondents

2.RSA-1735-2014 (O&M)

Reshma and another

....Appellants

Versus

Faquiria and others

..Respondents

Date of decision: 20.04.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushil Bhardwaj, Advocate for the appellants
in RSA-2025-2013 and
for respondent no. 1 to 3 in RSA-1735-2014

Mr. Sumeet Goel, Sr. Advocate with
Mr. Sameer Rathore, Adovcate for the appellants
in RSA-1735-2014

Mr. Sudeep Mahajan, Advocate for respondent no.1 to 3
in RSA-2025-2013

ANIL KSHETARPAL, J (Oral)

By this order two Regular Second Appeals i.e RSA-2025-2013 and RSA-1735-2014 shall stand disposed of.

By assailing the correctness of the judgment and decree passed by the learned First Appellate Court, certain defendants have filed RSA-2025-2013.

Some facts are required to be noticed. After death of late Sh. Shera, his property was inherited by his five sons and three

daughters. The mutation was sanctioned on 17.10.2002. The appellants filed an application for partition of the property under the Punjab Land Revenue Act, 1887. In the States of Punjab and Haryana, the agricultural land can be partitioned by the revenue authorities in exercise of the powers under the Punjab Land Revenue Act, 1887. However, the plaintiffs (respondents herein) were not impleaded as party in the aforesaid partition proceedings. The plaintiffs filed the suit for declaration stating that the aforesaid proceedings are illegal. The trial court dismissed the suit on the ground of lack of jurisdiction. However, the First Appellate Court found that since the order of partition is without impleading the plaintiffs as party held that such order can be challenged before the civil Court while relying upon Five Judge Bench decision of this Court rendered in **State of Haryana and others vs. Vinod Kumar and others'** 1986 Punjab Law Journal 161.

Heard learned counsel representing the parties at length and with their able assistance perused the paper book as well as the record which was requisitioned. Learned counsel representing the appellants contends that the plaintiffs, after filing suit, also filed a revision petition, which was dismissed. Once the basic order is non est in the eyes of law, the dismissal of the revision petition would not make it legal and enforceable. In any case, the revision petition has been dismissed only on the ground that the plaintiffs have not suffered any prejudice. In a partition proceedings every co-sharer/co-owner has a right to be heard to enable them to protect their rights.

Learned counsel representing the appellants further contends that the order of partition will operate as res judicata. The partition proceedings before the revenue authorities under the Punjab Land Revenue Act, 1887, are summary proceedings. Such proceedings do not fall within the scope of suit. Hence, the argument has no substance. In any case, admittedly, the plaintiffs were not party to the partition proceedings. Hence, no ground to interfere with the judgment passed by the Ist Appellate Court.

In RSA-1735-2014, learned counsel representing the parties are ad idem that in view of the judgment passed in RSA-2025-2013, the decree for grant of permanent injunction based, on the order of the partition, is required to be set aside.

Ordered accordingly.

All the pending miscellaneous applications, if any, are also disposed of.

20.04.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE