

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

RSA-1220-2019 (O&M)
Date of Decision: 16.10.2023

Randhir Singh through LR

...Appellant

Versus

Jaswant Kaur and others

...Respondent

RSA-3203-2019 (O&M)

Jagjit Singh

...Appellant

Versus

Randhir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S.S. Panag, Advocate for the appellant.
(in RSA-1220-2019)

Mr. P.S. Punia, Advocate for the appellant.
(in RSA-3203-2019)
For respondent in RSA-1220-2019.

HARKESH MANUJA, J. (oral)

1. This order of mine shall dispose of above-mentioned both
regular second appeals, wherein similar facts and controversy are

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involved. For reference, facts are being taken from RSA-1220-2019 titled as 'Randhir Singh through LR Vs. Jaswant Kaur and others'.

2. By way of present appeal, challenge has been made to the judgments and decrees dated 30.05.2014 and 07.08.2018 passed by the Courts below whereby suit for declaration to the effect that the appellant/plaintiff was owner in possession of 7/18th share of the suit property besides, the sale deed dated 26.03.1997, registered on 31.03.1997, executed by respondent-defendant No.1 in favour of defendant Nos.4 & 5 being declared null and void has been dismissed.

3. Briefly stating, the trial Court vide judgment & decree dated 13.05.2014 declared appellant/plaintiff to be entitled for 1/6th share out of suit property based on previous judgment dated 30.07.1980.

4. Aggrieved thereof, appellant-plaintiff filed first appeal wherein respondent No.1, 3 to 5 were proceeded against ex-parte on account of their non-appearance despite being served. Accordingly, the first appeal was contested only at the instance of respondent No.2-defendant No.2. The First Appellate Court vide judgment and decree dated 07.08.2018 dismissed the appeal, though upheld the declaration granted by the trial Court to the extent that the appellant-plaintiff was owner of the joint property to the extent of 1/6th share in terms of previous judgment dated 30.07.1980, yet dismissed the suit while

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recording that the plaintiff was required to avail more efficacious remedy as available to him of by filing suit for separate possession by way of partition.

5. As such, being aggrieved, both the appellant-plaintiff and respondent No.2-defendants No.2 have filed their separate appeals impugning the judgment and decrees passed by the Courts below.

6. Both the learned counsel for the parties are *ad idem* that since the dispute relates to the agricultural land situated within the revenue estate of village Dhiromajra, Tehsil Malerkotla, District Sangrur; Village Paheri and Bhagwanpura, Tehsil Amloh District Fatehgarh Sahib and partition could only be claimed before the Revenue Authorities concerned and not before the Civil Court and thus, the suit could not have been dismissed on the ground of non-maintainability there being no availability of efficacious remedy of seeking partition of the suit property before the Civil Court.

7. In view of the facts and circumstances of the present case and consented stand taken by the both the learned counsels for the parties in both the appeals, the impugned judgment and decrees dated 30.05.2014 and 07.08.2018 passed by the Courts below are set aside and the matter is remanded to the First Appellate Court for its fresh adjudication upon merits after hearing all the parties.

8. **Disposed off**, accordingly.

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9. The parties through their counsels are directed to appear before the Reference Court on 08.11.2023.
10. Pending application(s), if any, shall also stand(s) disposed off.

16.10.2023
Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No