

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CM-4011-C-2023 in/&
RSA-1043-2023 (O&M)
Date of Decision :21.04.2023

Nathu Singh and others

...Appellants

Versus

Sham Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Jain, Advocate for the appellants.

* * *

Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed against the impugned order dated 07.12.2022 passed by the lower Appellate Court vide which, the judgment and decree dated 26.09.2019 passed by the trial Court has been set aside and the suit of the respondent-plaintiff has been allowed.

Learned counsel for the appellants submits that though, the findings of the trial Court have been reversed by the lower Appellate Court but the only grievance of the appellants is that the partition proceedings qua the land in question in which both i.e. appellants as well as respondent are the co-sharer, the benefit will be claimed by the respondent even if, the land in question which is being held by respondent-plaintiff, comes to the share of the appellants-defendants and respondent-plaintiff will not vacate the same.

The apprehension being raised by the learned counsel for the appellants is incorrect. The possession of co-sharer will depend upon the findings recorded in the partition proceedings and all the co-sharers are to

abide by the decision of the competent authority by which, the land will be partitioned between the co-sharers while finalizing the partition proceedings. In case, any land other than the one which comes to the share of the co-sharer in the partition proceedings, the same has to be left for the co-sharer in whose share the said land has been apportioned hence, in case after the finalization of partition proceedings any land which is in the possession of the respondent comes to the share of the other co-sharer including the appellant, appropriate remedy is already available with the appellant to get the possession of the said land by getting the decree of partition executed.

Keeping in view the observation of this Court, as recorded hereinbefore, learned counsel for the appellants-defendants submits that the present regular second appeal may kindly be disposed of having been not pressed any further with liberty to the appellants to avail an appropriate remedy as and when the cause of action arises.

Ordered accordingly.

CM-4011-C-2023

Application is also disposed of.

April 21, 2023

aarti

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No