

**CM-3542-C-2023 in/&
RSA-921-2023**

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

**CM-3542-C-2023 in/&
RSA-921-2023
Date of Decision :12.04.2023**

Rajpal and others

..Appellants

Versus

Lakshmi Narain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.A. Sheoran, Advocate for the appellants.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal, the challenge is to judgment and decree dated 22.08.2016 passed by the trial Court by which, the suit filed by the respondents-plaintiffs for partition was allowed and the respondents-plaintiffs were held entitled for 08 marlas of land as per preliminary decree as well as to the judgment and decree dated 23.12.2022 passed by the lower Appellate Court by which, the appeal filed by the present appellants challenging the judgment and the preliminary decree of the trial Court dated 22.08.2016, has been dismissed.

Learned counsel for the appellants submits that while adjudicating the entitlement of the land in question qua the respondents-plaintiffs, 08 marlas land has been given and that too without deciding the issue with regard to the proportionate cut in respect of the street on the land

in question.

It may be noticed that in the regular second appeal, only the question of perversity is to be seen in the orders passed by the Courts below. It is a conceded position that present appellants did not participate in the partition proceedings and were proceeded ex parte and after the passing of preliminary decree, mode of partition suggested by the Local Commissioner in his report dated 05.11.2015 was accepted by the Court below. All the aspects required to be taken into consideration including the argument raised qua the grant of valuable land in favour of the respondents-plaintiffs has been taken into consideration by the Courts below and decided in accordance with law. All the arguments raised, have been dealt with on the basis of the evidence, which had come on record and no perversity could be pointed out by the learned counsel for the appellants.

Further, the appellants had liberty to challenge the objections to the partition proceedings by participating in the same but they chose not to avail the said remedy and were proceeded ex parte. The said order of proceeding the appellants ex parte was never challenged by them hence, once, a preliminary decree has already been framed and mode of partition has been suggested by the local Commissioner, in the regular second appeal, no grievance can be raised by the appellants. Once, the appellants did not avail the liberty to raise all the objections at the appropriate stage, the same cannot be raised now in the present regular second appeal.

Keeping in view the facts and circumstances noticed hereinbefore as no perversity has been pointed out by the learned counsel for the appellants in the findings recorded by the Courts below, no interference is called for by this Court and the present regular second appeal

CM-3542-C-2023 in/&
RSA-921-2023

is accordingly dismissed.

CM-3542-C-2023

Application is also dismissed.

April 12, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No