



RSA-2843-1996 (O&M)

1

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

214

RSA-2843-1996 (O&M)
Date of decision : 15.05.2024

Ram Phool

... Appellant(s)

Versus

Suraj Bhan and Others

...Respondent(s)

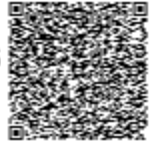
CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Hooda, Advocate for the appellant.

Mr. Chander Pal Tiwana, Advocate for
Mr. R.S. Chahar, Advocate and
Mr. Vijay Dahiya, Advocate for respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the defendant No.1-
appellant challenging the judgment and decree dated 02.02.1995 passed by
the Trial Court and the judgment and decree dated 29.05.1996 passed by the
First Appellate Court.
2. The brief facts relevant to the present case are that the present
suit was filed for permanent injunction for restraining the defendants
(appellant and proforma respondents No.2 to 6) from alienating the plot
described in para no.1 of the plaint more than his share and without getting
the same partitioned or demarcated. The case as set up was that the plaintiff-
respondent No.1 and the defendants are co-owners of the plot marked by

**RSA-2843-1996 (O&M)****2**

letters ABCD and shown as red colour in the site plan. The suit was contested by the defendants on the ground that they were absolute owners and plaintiff-respondent No.1 has nothing to do with the site in dispute. It was further averred that the suit land had already been partitioned mutually amongst the parties. In replication the contents of the plaint were reiterated and those of the written statement were denied.

3. On the basis of the pleadings, the following issues were framed:

1. Whether plaintiff and defendants are co-owners having 1/2 share each of the suit land, as alleged ? OPP
2. Whether the suit land has not so far been partitioned as alleged ? OPP
3. If issue no.1 and 2 are proved then whether the plaintiff is entitled for the relief of permanent injunction in the suit land ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Relief.

4. The Trial Court held that the suit land had not been partitioned amongst the co-sharers and the same was still joint between the parties. It was further held that the plaintiff-respondent No.1 had 1/2 share in the same and the defendants (appellant and proforma respondents No.2 to 6) had 1/2 share. The suit was decreed by the Trial Court to the effect that the defendants were restrained from selling more than their share and without

**RSA-2843-1996 (O&M)****3**

getting the land partitioned. Aggrieved by the same, an appeal was preferred by the defendant No.1-appellant which appeal was also dismissed vide judgment and decree dated 29.05.1996. Hence, the present regular second appeal.

5. Learned counsel for the defendant No.1-appellant would contend that the property was ancestral property which was partitioned between the parties 30 to 35 years ago and the suit property came to the share of the defendants and that the plaintiff-respondent No.1 had got his share in the land adjoining the suit property.

6. *Per contra*, learned counsel for the plaintiff-respondent No.1 would contend that there is no evidence on the record as held by both the Courts regarding the partition of the property. It is further the contention that the only decree which has been passed is that the defendants would not sell more than their share in the suit property.

7. I have heard both the counsel.

8. In the present case there is not an *iota* of evidence which has come on the record to show that the suit land has been partitioned between the parties. Findings of fact have been returned by both the Courts holding that the suit land remains unpartitioned between the parties. The decree passed by the Trial Court was to the effect that the defendants would not sell more than their share and without getting the land partitioned. The said decree was passed in the year 1995. Similar findings were returned by the First Appellate Court vide judgment and decree dated 29.05.1996. In the

**RSA-2843-1996 (O&M)****4**

absence of any evidence to show that the land was partitioned before 1995, no fault can be found in the impugned judgments and decrees passed by both the Courts.

9. No question of law, much less any substantial question of law, arises in the present case for determination by this Court. The regular second appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.05.2024
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO