

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

**RSA No.3242 of 2019 (O&M)
Date of Decision: 22.02.2024**

Tilak Raj

...Appellant

Versus

Suba Singh & others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Ajay Kamboj, Advocate,
for the appellant.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree passed by learned Additional Civil Judge (Senior Division) Tohana, District Fatehabad (for short 'the trial Court') on 24.03.2017, whereby the Civil Suit filed by respondent No.1-plaintiff (here-in-after to be referred as 'the plaintiff') for seeking the decree against the appellant-defendant No.4 and proforma-respondents No.2 to 5-defendants No.1 to 3 & 5 (here-in-after to be referred as 'the defendants') for possession, by way of partition of the suit property, has been decreed to the effect that he (plaintiff) is the owner of 12/4965 share in this property and is entitled for its partition, by metes and bounds and the defendants have also been restrained from alienating or changing the nature of the same without getting it partitioned as well as by the judgment and decree handed down by learned Additional District Judge, Fatehabad (for short 'the Lower Appellate Court') on 26.03.2019, dismissing the appeal as moved by defendant No.4 against the afore-mentioned judgment and decree passed by the trial Court, he

(defendant No.4) has chosen to prefer the instant Regular Second Appeal to lay challenge to the same.

2. As per the brief factual-matrix, as emerging from the perusal of the file and resulting in the filing of the present appeal, the plaintiff filed the above-referred Civil Suit, while averring that he was a co-sharer in the suit property and the same had not been partitioned by any Competent Court. The LRs of defendant No.1 did not file the written-statement and defendant No.2 was proceeded against *ex-parte* whereas defendants No.3 and 4, in their joint written-statement, asserted that the said property, had already been partitioned by virtue of family settlement arrived at between the parties and defendant No.5 adopted the written-statement as filed by these defendants. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence led by them on the record and hearing their respective counsel, the trial Court decreed the Suit and the appeal, filed by defendant No.4 against the judgment and decree passed by the trial Court, has also been dismissed, as already indicated in the opening para of this judgment.

3. I have heard learned counsel for the appellant-defendant No.4 in the instant appeal, at the preliminary stage and have perused the file carefully.

4. Learned counsel for defendant No.4 contends that the suit land/property had already been partitioned by way of a family settlement, affected between the parties and the same was no more a joint property and moreover, co-sharer Chanan Ram had not been impleaded as party in the Suit and thus, it was bad for the non-joinder of necessary party and to add to it, the entire land holding/property had not been included in the subject-matter of the Suit and therefore, it deserved to be dismissed for partial partition but both the Courts

below ignored the afore-discussed crucial aspects of the matter, as involved in the above-said Suit and in these circumstances, it becomes quite explicit that the impugned judgments and decrees are not legally sustainable and hence, the same deserve to be set aside.

5. However, the afore-raised contentions do not cut much ice with this Court because as regards the contention qua the family settlement, it is pertinent to mention here that the trial Court and the Lower Appellate Court have concurrently held that the defendants had not been able to substantiate the factum of the suit property having been partitioned by virtue of any such family settlement. Then, so far as the contention regarding co-sharer Chanan Ram having not been joined as party in the Suit is concerned, both the Courts below have categorically observed that he had already been impleaded therein as the legal representative of defendant No.1 and therefore, the Suit could not be held to be bad for non-joinder of necessary party. Further, as regards the plea of partial partition, the trial Court and the Lower Appellate Court have observed that in the revenue record pertaining to the joint 'Khewat' wherein the suit property is comprised, the land measuring 08 Marlas had been shown to be '*Gair-Mumkin land for tubewell*' and it being so, the same would be the subject-matter for partition by the Revenue Court and the Civil Court was not to entertain the plea of the partition thereof. Defendant No.4 has not been able to show as to how the above-discussed findings, as returned by both the afore-said Courts, are factually or legally incorrect or are perverse in any manner.

6. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, as passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to

warrant any interference by this Court. Resultantly, the same are, hereby, upheld and the Regular Second Appeal in hand, being devoid of any merit, stands dismissed.

22.02.2024
seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*