



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

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**RSA-5319-2019 (O&M)
Date of Decision : 16.12.2024**

CHET SINGH Appellant

VERSUS

MUKAND SINGH AND ORS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nitish Garg, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

CM-12355-C-2024

1. This is an application for revival of the main appeal which was adjourned *sine die* vide order dated 03.12.2024 passed by this Court.
2. For the reasons stated in the application, the same is allowed and the main appeal is revived. With the consent of learned counsel for the appellant the main appeal is taken on Board today itself.

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3. The present regular second appeal has been preferred by defendant No.1-appellant challenging the judgments and decrees dated 04.09.2017 passed by the Trial Court (date of decision mentioned as 07.09.2017 on the last page of the judgment as well as in the decree sheet) and dated 24.04.2019 passed by the First Appellate Court.
4. Brief facts relevant to the present *lis* are that plaintiff-respondent No.1 herein filed a suit for possession by way of partition of plot

measuring 16 Marlas situated in Village Badrukha to the extent of $\frac{1}{2}$ share as fully described in the plaint as well as for permanent injunction. The case set up by plaintiff-respondent No.1 was that originally Hazura Singh son of Puran Singh son of Ram Singh was owner in possession of the suit land which is an *Abadi* plot and surrounded by residential houses situated in a populated area. The plaintiff-respondent No.1 and defendant No.1-appellant purchased the suit plot from Hazura Singh vide registered sale deed dated 03.12.1997 in equal shares to the extent of $\frac{1}{2}$ share each and in this manner after purchase the plaintiff-respondent No.1 and defendant No.1-appellant both became owners and in joint possession of the suit plot to the extent of $\frac{1}{2}$ share each. Since the suit property had not been partitioned by metes and bounds, the suit was filed.

5. On notice the suit was contested by defendant No.1-appellant herein raising various preliminary objections. On merits defendant No.1-appellant denied the site plan stating that the same does not relate to the suit property. However, it was not denied that the plot had been purchased by plaintiff-respondent No.1 and defendant No.1-appellant jointly. Replication was filed by plaintiff-respondent No.1 denying the averments made in the written statement filed by defendant No.1-appellant and reiterating those of the plaint.

6. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for separate possession by way of partition of plot

Marlas situated at Village Badrukhan, as prayed for
? OPP

2. Whether the plaintiff is entitled to the relief of
permanent injunction, as prayed for ? OPP

3. Whether the suit of the plaintiff is not maintainable
? OPD

4. Whether the plaintiff has not come to the Court
with clean hands and has concealed the material
facts from the Court ? OPD

5. Whether the plaintiff has no cause of action to file
the present suit? OPD

6. Relief.

7. The Trial Court decreed the suit vide judgment and decree dated 04.09.2017 (date of decision mentioned as 07.09.2017 on the last page of the judgment as well as in the decree sheet). Aggrieved by the same an appeal was preferred by the defendant No.1-appellant which appeal was dismissed vide judgment and decree dated 24.04.2019 passed by the First Appellate Court. Hence, the present regular second appeal by defendant No.1-appellant.

8. The only argument raised by the learned counsel for defendant No.1-appellant is that the personal property of defendant No.1-appellant had been included in the partition and hence the impugned judgments and decrees are without jurisdiction to that extent.

9. Heard.

10. In the present case a perusal of the written statement filed by defendant No.1-appellant, which has been appended with the paper book, reveals that no such stand was taken by defendant No.1-appellant in his written statement. Infact, the site plan was objected to as being incorrect and not depicting the correct picture. However, there was no stand taken that any personal property of defendant No.1-appellant had been included while filing the present suit for partition. Learned counsel for defendant No.1-appellant has been unable to convince this Court that without there being any plea raised in the written statement regarding the personal property having been included in the partition, the same can be raised before this Court in a regular second appeal. No other argument has been raised.

11. The only additional evidence sought to be produced and proved vide CM-15044-C-2019 is a site plan, which again does not further the case of defendant No.1-appellant.

12. In view of the above, I do not find any merit in the application being CM-15044-C-2019 for additional evidence as well as in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. Both the application being CM-15044-C-2019 and the main appeal, being devoid of any merit, are accordingly dismissed. Other pending applications, if any, also stand disposed off.

16.12.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No