

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4402 of 2018 (O&M)
Date of Order:05.03.2024

Rameshwar Dass (deceased) through his LR's and others

.Appellants

Versus

Dharam Pal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Avtar Singh Syan, Advocate
for respondent no.1.

ANIL KSHETARPAL, J

1. This regular second appeal has been filed by the defendants to assail the correctness of the preliminary decree for possession by way of partition of the joint property.

2. Both the courts have held that Sh. Dharam Pal, the plaintiff (respondent no.1 herein) is entitled to 1/7th share in the property left behind by Sh. Ramji Dass. Sh. Ramji Dass had purchased two plots. Vide sale deed dated 25.08.1972, Sh. Ramji Dass and Sh. Parma Nand jointly purchased 283/1/3 square yard plot in equal shares. Thus Sh. Ramji Dass had one half of the aforesaid plot measuring 283/1/3. Similarly, Sh. Ramji Dass also purchased another plot measuring 141/1/4 square yard on 12.04.1973. Sh. Ramji Dass left behind seven sons including Sh. Dharam Pal. Sh. Dharam Pal filed a suit for partition of the property. He claims 1/7th share in the property left behind by Sh. Ramji Dass.

3. On the other hand, Sh. Rameshwar Dass, appellant no.1, claims

that Sh. Vidhi Chand son of Sh. Parma Nand has sold his share in his favour on 14.06.1993. Sh. Som Nath, another brother of Sh. Rameshwar Dass has sold his share in favour of Sh. Rameshwar Dass and Smt. Satya Devi wife of Sh. Om Parkash. Though, the defendants have pleaded that the sale deeds in favour of Sh. Ramji Dass were benami transactions, however, they have failed to prove that fact. Ultimately, both the courts have decreed the suit declaring that Sh. Dharam Pal is owner of 1/7th share of the property left behind by Sh. Ramji Dass. Sh. Ramji Dass was owner of ½ share in plot measuring 283/1/3 square yards and exclusive owner of plot measuring 141/1/4 square yards plot.

4. The learned counsel representing the appellants submits that while passing the preliminary decree, the share of the appellant-Rameshwar Dass has not been determined. He submits that while passing the preliminary decree, the court should have passed a proper decree determining the share of each of the co-owner. He admits that the share of Sh. Dharam Pal shall remain unaffected.

5. There is some merit in the plea of the appellants. While passing a preliminary decree, the court is required to determine the share of each of the co-sharer and not only the plaintiff(s).

6. Keeping in view the aforesaid facts, the trial court is directed to modify the preliminary decree while determining the share of each of the brother. This exercise should be carried out within one month, from today, as the finding of fact arrived at by the courts below is not being disturbed. It is clarified that the share of Sh. Dharam Pal shall remain unaffected.

7. With these observations, the appeal is disposed of.

8. All the pending miscellaneous applications, if any, are also disposed of.

March 05, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO