



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 26 of 2018 (O&M)

Date of Decision: 11.07.2024

Narayan Dutt and Others

... Appellant(s)

Versus

Dev Dutt (Since Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjay Verma, Advocate
for the appellant(s).

Mr. Hemant Bassi, Advocate
for respondent No.1.

Anil Kshetarpal, J.

1. This second appeal has been filed against the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision after impleading the Haryana Urban Development Authority as a defendant.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff filed a suit for partition and possession by metes and bounds. He claimed that the suit property is joint and the same is required to be partitioned by metes and bounds. It is claimed that Pandit Harphul Singh was the owner of the land measuring 33 kanals and 6 marlas. A major portion of the aforesaid land was acquired. Subsequently, the acquiring authority released the plot measuring 18 marlas from acquisition. The Trial Court had passed the preliminary decree for partition. The First Appellate Court as already noticed, remitted the matter back to the Trial Court for deciding the matter afresh, after making the Haryana Urban Development Authority as a defendant.

3. Heard the learned counsel representing the parties, at length and

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with their able assistance, perused the paper-book.

4. The learned counsel representing respondent No.1 admits that the First Appellate Court's order remitting the matter back to the Trial Court is erroneous.

5. Moreover, a portion of the joint land is acquired by the State or its instrumentalities. In accordance with the Land Acquisition Act, 1894, the acquiring authority or the authority for whom the land has been acquired does not become co-sharer in the joint land. A parcel of the land which has been acquired exclusively vests in the acquiring authority because the acquisition is made for the public purpose. There is deemed division of the property between the owner and the acquiring authority. Hence, the Haryana Urban Development Authority was not the necessary party.

6. Consequently, the present appeal is allowed and the impugned order is set aside while remitting the matter back to the First Appellate Court to decide the appeal afresh. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 02.08.2024.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 11, 2024
"DK"

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No