

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

238

1. ESA-22-2022 (O&M)
Date of decision: 14.01.2025

VARINDER SINGH

..Appellant

Versus

SURAJ BHAN AND ORS

..Respondents

2. ESA-26-2022 (O&M)

RATTNO DEVI (DECEASED) THROUGH LRS

..Appellant

Versus

SURAJ BHAN AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

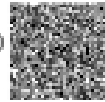
Present: Mr. R.S. Chauhan, Advocate
Mr. Rohit Sapehiya, Advocate
for the appellant.

Mr. Satbir Rathore, Advocate
Ms. Jyotika Behl, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. With the consent of learned counsel for the parties, two connected execution second appeals shall stand disposed of by this common order.

2. The appellant has filed two suits for possession by way of partition of the property, in which preliminary decree was passed on 14.10.2006, against which appeal was dismissed on 28.08.2008. When proceedings for passing final decree were pending, the respondents Sh. Suraj Bhan and Sh. Kishori Lal Sharma filed objections as well as an application under Order I Rule 10 of the Code of Civil Procedure, 1908, for



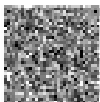
impleadment as party-respondents, which was dismissed by the Court. Ultimately, the final decree for partition was passed on 28.04.2015. When the decree holder filed the execution petition of the final decree for partition, Sh. Suraj Bhan and Sh. Kishori Lal Sharma filed objection petitions, which were dismissed by the Executing Court. However, in first appeal, the Appellate Court has remitted the matter back to the trial Court for culling out the issues and permitting the respondents to lead evidence. The correctness of such order is challenged before this Court.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. Learned counsel for the appellant has made the following submissions:-

- i. The application filed by the respondents for impleadment was dismissed by a detailed order, which has now become final.
- ii. The revision petition filed against dismissal of application for setting aside preliminary decree was also dismissed.
- iii. He submits that as per the revenue record, Sh. Suraj Bhan and Sh. Kishori Lal Sharma are not co-sharers and they cannot now re-agitate the matter.

5. Per contra, learned counsel for respondent No.1 has submitted that in Civil Suit No.152 of 11.05.1989, titled as Ram Kishan and others Vs. Bachhitter Singh and others, decided on 24.12.1993, Sh. Suraj Bhan and Sh. Kishori Lal Sharma (objectors), were defendant No.13 and 15. In that suit



finding was returned that the plaintiff and defendant No.1 to 12 were not the owners of the suit property. Moreover, in para 11 of judgment dated 24.12.1993, it was held as under:-

“11. In view of the above said ruling, it must be held that the predecessor of defendants Nos.13 to 15 was holding the suit land in his own right as owner and not as tenant as argued by the ld. counsel for the plaintiff.....”

6. The judgment dated 24.12.1993, was upheld by the First Appellate Court on 04.08.1997.

7. In these facts, the Court has directed the Executing Court to cull out the issues and permit the parties to lead evidence. As far as appellant’s counsel submission that application under Order I Rule 10 or the objections of the respondents were dismissed, it may be noted that the respondents were never impleaded as a party to those proceedings. Hence, they were never given an opportunity to prove their stand. Once, their application for impleadment was dismissed, they will be treated as non-party to the suit.

8. Furthermore, it is evident that the objections of the respondents require adjudication after permitting the parties to lead evidence particularly in view of finding arrived at in the judgment dated 24.12.1993. Hence, no ground to interfere is made out.

9. Dismissed accordingly.

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

January 14th, 2025

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No