



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

SAO-14-2021 (O&M)

Date of decision : 04.04.2025

Chander Parkash and others

...Appellants

Vs.

**Bachittar Singh (Deceased) through his Lrs
Karamjeet Kaur and others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

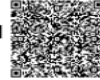
Present: Mr. Avnish Mittal, Advocate
for the appellants.

Mr. Rakesh Gupta, Advocate
for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. Defendants No. 2 to 7, 9 to 11 & 13 to 16 assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision.

2. Proceedings for preparation for final decree of partition was pending before the trial Court after preliminary decree for partition was passed on 29.10.2002 which in appeal was affirmed by the First Appellate Court. The respective shares of parties were determined and adjudicated. The application for preparation of final decree was passed, in which, various Local Commissioners were appointed, however, there was no suggestion in the manner and mode of carrying out final partition. Subsequently, the trial Court dismissed the application for final partition on the ground that various houses



have been constructed after leaving a passage of 01 kanals 09 marlas. The trial Court wrongly held that it is not possible to partition the property. The First Appellate Court has hence remitted the matter back.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. Learned counsel representing the appellants submits that in view of construction of various houses by the purchasers, physical division of the property by metes and bounds is not possible. Hence, the First Appellate Court has wrongly remitted the matter back to the trial Court.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. The rights of the parties have already been determined, which have become final. The Partition Act, 1893 provides various modes of partition, which includes division by metes and bounds. The rights of the plaintiff cannot be defeated by alleging that there is construction of various houses. Moreover, on 23.04.2019, in the revision petition filed by one of the appellant, the following order was passed:-

"For these reasons, the revision petition is allowed and the impugned judgment is set aside. The order of the learned trial Court is restored, but it is added that petitioner would continue further construction subject to furnishing of undertaking in the trial Court that if the property falls to the share of any other person, the petitioner will have no objection and would remove the Malba".

7. In view of the aforesaid undertaking, the appellants now cannot claim that because of construction no final decree for partition can be passed.



8. Keeping in view the aforesaid facts, no ground to interfere is made out.
9. Hence, the appeal is dismissed.
10. All the pending miscellaneous applications, if any, are also disposed of.

04.04.2025
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(ANIL KSHETARPAL)
JUDGE

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