



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

(271)

**RSA No.2544 of 2022 (O&M)
Date of Decision: 03.04.2025**

Ajmer Singh

...Appellant

Versus

Kavita Rani and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. H.P.S. Ishar, Advocate
for the appellant.

Mr. HPS Ghuman, Advocate
for applicants-respondents No.1 and 1-A.

VIKRAM AGGARWAL, J (ORAL)

CM-4164-C-2024

This is an application preferred by the applicants Ramesh Talwar and Pardeep Kumar under Order 22 Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC') for substituting them as respondent No.1 and 1-A in place of respondent No.1-Kavita Rani on account of respondent No.1-Kavita Rani having sold her share to the applicants through registered sale deed dated 07.08.2023 (Annexure R-1/1).

Notice of the said application was issued on 30.04.2024 and the same was accepted by Sh. HPS Ishar, learned counsel representing the non-applicant-appellant. However, no reply has been filed.

It is relevant to notice at this stage that learned counsel representing respondents No.1 and 1-A was earlier representing respondent No.1-Kavita Rani and he submits that respondent No1.-Kavita Rani has no objection to the same.

I have heard learned counsel for the parties.

For the reasons mentioned in the application, which is duly supported by affidavit of Sh. Pardeep Kumar, the same is allowed and the applicants are ordered to be substituted as respondent No.1 and respondent 1-A in place of respondent No.1-Kavita Rani.

Amended memo of parties is taken on record.

RSA No.2544 of 2022 (O&M)

This is defendants appeal against the judgment and decree dated 28.10.2022 passed by Court of learned Additional District Judge, Patiala, dismissing the appeal filed against the judgment and decree dated 21.03.2017, passed by the Court of learned Civil Judge (Jr. Division), Nabha, vide which the suit for possession and partition was decreed.

2. On 29.11.2022, the following order was passed:-

“As apparent from the findings of the Courts below, it has been held that on the basis of sale deed dated 17.01.2007, ownership to the extent of 3/4th share of the property in dispute/ house stands transferred in favour of the plaintiff. She is, therefore, owner of the same to that extent.

Learned counsel for the appellant has not been able to dispute findings of the Courts below on merits. The same are, therefore, affirmed.

The only submission made by learned counsel is that the decree passed by the trial Court needs to be corrected. A preliminary decree has been passed in favour of the plaintiff directing defendant No.3 to get the suit property partitioned by metes and bounds between plaintiff and herself, and defendant No.1 (appellant herein) and defendant No.2 were directed to vacate the suit property within 90 days from the date of decree. He contends that only after the suit property is partitioned, by metes and bounds, it should be vacated by the

defendant Nos.1 and 2. Whereas, the decree in question directs them to vacate the suit property within 90 days, though it has not been partitioned. Only after the property has been partitioned, it can be handed over to the plaintiff and defendant No.3, and it cannot be the other way around as ordered by the trial Court.

Notice of motion be issued for 18.05.2023, limited to this aspect only. In the meanwhile, the executing Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

3. A perusal of the aforesaid order shows that the findings of the Courts below have already been affirmed since the Coordinate Bench noticed that learned counsel for the appellant had not been able to dispute the findings on merits. The only question which arises for consideration before this Court is as to whether the direction to the appellants/defendants No.1 and 2 to vacate the suit property within 90 days of the decision passed by the Court was valid in law or not.

4. The suit by Kavita Rani-respondent No.1 was filed for possession against defendants No.1 and 2 Ajmer Singh and Deesha and by way of partition by metes and bounds between plaintiff and defendant No.3. Issue No.1 was as to whether the plaintiff was entitled to the relief of possession and permanent injunction. The said issue was decided in favour of the plaintiff by the learned trial Court. Eventually, the operative part of the judgment reads as follows:-

“In view of my above said discussion the suit of the plaintiff succeeds and the preliminary decree is passed in favour of the plaintiff, directing the defendant no.3 to get the suit property partitioned by metes and bounds between the plaintiff and herself. Again the defendant no.1 and 2 are

directed to vacate the suit property within 90 days from the date of decision. Further a decree for permanent injunction in favour of the plaintiff is also passed, restraining the defendant no.1 and 2 from demolish or causing any damage or alienate the suit property illegally and forcibly.”

5. Admittedly, the appeal filed against the said judgment and decree was also dismissed by the Court of learned Additional District judge, Patiala vide judgment and decree dated 28.05.2022.

6. In the considered opinion of this Court, the contention that the decree needs to be corrected is fallacious. It has to be borne in mind that the relief sought against defendants No.1 and 2 was the relief of possession and that sought against defendant No.3 was that of partition by metes and bounds. Accordingly, there was no error in the judgment passed by the learned trial Court vide which the defendants No.1 and 2 were directed to hand over the possession of the suit property within a period of 90 days.

Accordingly, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

April 03, 2025
Rekha

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