IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(**110**) RSA-2498-2022 (O&M)
Date of Decision:-**12.02.2026**

OM PARKASH (DECEASED) THROUGH LRS

… Appellant

Versus

SUSHIL KUMAR AND ORS

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. P.S. Chahal, Advocate
for the appellant.

Mr. Jag Nahar Singh, Advocate
for the respondents No.1 and 2.

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VIRINDER AGGARWAL, J. (Oral)

1. The appellant/defendant has instituted the present Regular Second Appeal (hereinafter referred to as "RSA") assailing the concurrent findings recorded by the Courts below, whereby the suit for partition filed by the respondent/plaintiff was decreed vide judgment and decree dated 03.02.2017 passed by the learned Civil Judge (Junior Division), Hoshiarpur, and the appeal preferred thereagainst was dismissed by the learned First Appellate Court vide judgment and decree dated 17.05.2022.

2. Briefly stated, the respondents/plaintiffs instituted a suit seeking partition of the residential house property, fully detailed and described in the head-note of the plaint.

2.1. Defendants No. 2 and 3 contested the suit, inter alia, on the plea that the daughters of Bhim Sain had not executed any valid gift deed

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in favour of plaintiff No. 2 and that the suit property had already been subjected to an oral partition amongst the parties.

3. On the basis of the pleadings of the parties, the following issues were framed for determination:–

1. Whether the plaintiff are entitled to separate possession by way of partition of half share of the house in dispute ?OPP
2. Whether Tarawati mother of plaintiffs executed registered Will in favour of defendant No.4 qua her share?OPP
3. Whether suit of plaintiffs is not maintainable in the present form as the property in dispute has already been partitioned between the co-shares and all the co-shares are in their separate possession ? OPP
4. Whether three daughters of Bhim Sen namely Savita Rani, Santosh Kumari and Suman Kumari executed gift deed dated 24-06-2013 in favour of plaintiff No.2 ?OPP
5. Whether property in dispute has already been mutually divided between the parties ? OPP
6. Relief.

4. Pursuant to the framing of issues, both parties were afforded full and adequate opportunity to lead evidence in support of their respective cases. Upon a comprehensive appraisal of the entire material available on record, the learned trial Court decreed the suit and passed a preliminary decree for partition.

5. Aggrieved by the said judgment and decree, an appeal was preferred. The learned District Judge, Hoshiarpur, upon reappreciation of the evidence and consideration of the submissions advanced, dismissed the

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appeal and affirmed the judgment and decree rendered by the learned trial Court.

6. Still dissatisfied, the appellant/defendant has instituted the present Regular Second Appeal assailing the concurrent judgments and decrees passed by the Courts below.

7. I have heard learned counsel for the parties at considerable length and have accorded anxious and thoughtful consideration to submissions, in the backdrop of the pleadings on record, the evidence adduced by the parties, and the concurrent findings returned by the Courts below.

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellant contended that both the Courts below have failed to appreciate that the suit property already stood partitioned and that the appellants/defendants are in possession of the more advantageous portion thereof. It was urged that, in view of the decree

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passed, the appellants/defendants are likely to be dispossessed from the portion presently in their occupation, upon which they have effected improvements.

9.1. The relationship between the parties is admitted. It has come on record that Savita Rani, Santosh Kumari and Suman Kumari, sisters of plaintiff No.2, executed a Gift Deed in respect of their respective shares in the house property in favour of plaintiff No.2. The said Gift Deed stands duly proved as Ex. P1. Savita Rani (PW1), one of the executants, entered the witness box and supported its execution. Surjit Singh, the Deed Writer, proved that he had scribed the Gift Deed and also proved the relevant register entry (Ex. P4). Kishori Lal (PW2), the attesting witness, proved the due attestation and registration thereof. DW1 Om Parkash admitted in his cross-examination that the sisters had not laid any claim to the house in question after execution of the Gift Deed.

9.2. It is not in dispute that the parties are residing in separate portions of the house and that the appellants/defendants are in occupation of their respective portions. However, there is no cogent evidence on record to establish that the suit property had been partitioned by metes and bounds pursuant to any oral family arrangement. In the absence of a legally established partition by metes and bounds, the respondents/plaintiffs are well within their rights to seek partition through the process of the Court. By virtue of the preliminary decree, only the respective shares of the parties have been declared. The actual allocation of specific portions would arise at the stage of preparation of the final decree. Consequently, the mere passing of a preliminary decree does not

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place the appellants/defendants in immediate jeopardy of dispossession from the portion presently under their occupation.

9.3. Finding no merit in the present appeal, the same is accordingly dismissed.

10. In view of the final adjudication of the principal matter, all pending miscellaneous applications, if any, also stand disposed of. No further orders are called for in that regard.

(VIRINDER AGGARWAL)
JUDGE

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Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No

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