

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

RSA No. 2038 of 1988. [O&M]
Date of Decision: 18th February, 2015.

Sant Kaur Appellant through None

Versus

Dewan Singh & Ors. Respondents None.

CORAM: HON'BLE MR. JUSTICE SURYA KANT

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

This Regular Second Appeal is directed against the judgment and decree dated 18.05.1987 passed by learned District Judge, Ludhiana, allowing the appeal against the judgment and decree dated 12.10.1983 of the Sub Judge 1st Class, Ludhiana to the extent that the appellants were declared joint owners of the house in dispute along with Dewan Singh – respondent but having up-held the findings on Issue No. 2, their further prayer for partition of the property was declined.

[2]. The Memo of Parties reveals that the appellant is daughter of Lal Singh son of Bir Singh, whereas the contesting defendant-respondent is her brother – Dewan Singh. The sister of the appellant [since deceased] was co-plaintiff and co-appellant before the Civil Court and the first Appellate Court, respectively.

[3]. The family dispute amongst the sisters and their brother pertained to a house owned by their father-Lal Singh who died in November, 1975 leaving behind the parties and his wife as legal

heirs. The appellant's case was that Lal Singh died intestate, hence the two daughters of Lal Singh, namely, the plaintiffs were entitled to 2/3rd share in the house in dispute. The case of the respondent-defendant [brother] was that the house was purchased from his hard-earned money and Lal Singh did not spend even a single penny, hence he was absolute owner of the house.

[4]. The parties went on trial on the following issues:-

- “1. Whether the plaintiffs have locus-standi to file the suit?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD.*
- 3. Whether the plaintiffs are entitled to separate possession by partition of 1/3rd share each of the house in dispute and the machinery on the basis of inheritance, as alleged? If so, its effect?OPP*
- 4. Relief”.*

[5]. The first appellate Court vide judgment and decree dated 18.05.1987 discarded the plea taken by the respondent-defendant and held the appellant [since deceased and represented by her legal heirs] and her sister as co-owners of the subject property along with the respondent.

[6]. Issue No. 2 re: maintainability of the suit, namely, partition or separate possession of their respective shares was declined. In other words, the first appellate Court left it open for the appellant/ other co-owners to seek partition of the joint property in accordance with law.

[7]. It appears from the record that no one has appeared on behalf of the parties since the year 1995. There is no fresh appearance on their behalf as of now also. It, thus, further appears

that pending this appeal, the parties must have resorted to the remedy of partition as available in law and might have got the house partitioned and/or entered into a settlement owing to their relationship. Nevertheless, the finding returned by the 1st Appellate Court that the deceased-appellant or her sister are co-shares in the subject property is based upon correct appreciation of law and facts on record and is hereby upheld.

In these peculiar circumstances, this appeal is dismissed as infructuous but without affecting the rights of the appellant or the proforma respondent in terms of the judgment and decree passed by the first Appellate Court. The Registry is directed to send a copy of this order to the parties with liberty to them to seek revival of this appeal, if so required, within a period of three months from the date of communication.

February 18, 2015.
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(SURYA KANT)
JUDGE