

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

CR No.3086 of 1999
Date of Decision: 19.08.2015

Ashok Kumar and Others **.....Petitioners**

Vs.

Chander Kanta and Others **.....Respondents**

RSA No.2209 of 1999

Ashok Kumar and Others **.....Appellants**

Vs.

Chander Kanta and Others **.....Respondents**

CORAM: HON'BLE MR. JUSTICE K.KANNAN

**Present:- Mr.Satinder Khanna, Advocate
for the appellant.**

Mr.J.S.Jaggi, Advocate, for the respondents.

K.KANNAN, J.(Oral)

The revision is posted for hearing today for final hearing. There is already a direction by this Court on 14.01.2015 that revision shall be taken up along with RSA No.2209 of 1999. There is also an order recorded in Civil Revision on 18.06.1999 that the RSA No.2209 of 1999 will be heard alongwith the civil revision.

I would therefore understand that the Civil Revision and the second appeal ought to be heard together by the orders already passed by the court and since these orders have been passed in the presence of counsel for the parties, they must have

understood the imperatives of such joint hearing. There is a plea for adjournment by respondent that I reject the plea as untenable and proceed to pass the following order.

The civil revision is against an order passed dismissing an application filed under Sections 152 and 153 CPC filed by the defendant that the decree contained a clerical error. The error which the defendant pointed out was that the property which the daughter claimed as belonging to the father had been found to have been jointly purchased in the names of father and mother and the trial Court had already rejected the plea of *benami* purchase by the father for his own benefit and the trial Court had found that the wife was entitled to half share as a joint purchaser and remaining half to be divided amongst five sons, the daughter and widow so that the plaintiff as a daughter was entitled to 1/7th of ½ equivalent to 1/14th share.

The appellate Court had found that the trial Court had rejected the defence that the father was entitled to half share and granted 1/7th share. I have gone through the judgment of the trial Court. It has taken specifically considered and rejected the plea of *benami* as taken by the plaintiff to contend that notwithstanding a joint purchase in the name of father and mother property belonged wholly to the father. The property was only owned jointly by the father and mother, and that each party to the sale was entitled to half share. By clear implication, the father was also only entitled to half share of the property. The

property allottable to the plaintiff could be, therefore, only with reference to 1/14th share. The appellate Court had clearly misread the judgment of the trial Court and allowed to 1/7th share which is not tenable. The plaintiff will have a decree for 1/14th share only.

The Civil Revision is allowed.

The appeal i.e RSA No.2209 of 1999 has been filed with delay of 11 years and 224 days. After filing a civil revision against the order rejecting an application for correction of clerical mistake, the delay having already been condoned, the Court has not admitted the appeal on 19.01.2000 for framing any substantial questions of law which are required to be framed and they are as under:-

1. Whether the lower appellate Court was not in error in misreading the judgment of the trial Court to hold the father was exclusively entitled to the whole of the property.
2. Whether the property had been jointly purchased by the father and mother and trial Court has held that the mother was entitled to half share and father was entitled half share?

In the light of the reasonings contained in the order dealing with the civil revision petition, both the questions of law are answered in favour of the appellant holding that the plaintiff was entitled only to 1/14th share in the suit property.

19.08.2015
anil

(K.KANNAN)
JUDGE