

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

RSA No.3173 of 2015 (O&M)

Date of Decision: 14.07.2015

Gurmeet Singh (deceased) through LR Jasmeet Singh

.....Appellant

Versus

Balbir Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Prateek Pandit, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present Regular Second Appeal is against concurrent findings of both the Courts below whereby suit filed by plaintiff for declaration was dismissed by the Court of first instance and first appeal filed by plaintiff was also dismissed by Court of first appeal.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of present appeal that after death of Lachman Singh on 24.04.1994 and in continuation of earlier family arrangement, no family settlement was arrived at on 09.07.1972 and memorandum was written. Defendants No.1 to 3 filed written statement taking preliminary objections thereby taking the plea that suit land was

originally owned by Baldev Singh and after his death the same devolved upon his heirs. The suit is mala fide. More so the limitation period for getting such declaration is 3 years from the date when the rights to sue accrued for the first time. No suit was filed during the life time of Daler Singh. So the present suit is barred. In the written statement filed by defendants No.4 to 7 they admitted that House No.39 situated at Rajinder Nagar, Jalandhar is Joint Hindu Coparcenary property and after death of Lachhman Singh a family settlement was reduced into writing.

4. On these facts the Court of first instance returned the findings that perusal of Exhibit P-1 shows that the same was written on simple paper and was not registered. The contents of the document reflect that new rights were created for the first time in the said memorandum and there is no mention of alleged family settlement which took place earlier. As such the said document required compulsory registration as per law. Court of first instance also recorded observation that plaintiff failed to prove that the suit property is ancestral in nature and same was purchased out of joint funds of joint Hindu family by late Lachman Singh and the suit was dismissed.

5. The plaintiff remained unsuccessful during the first appeal.

6. Learned counsel for appellant took the plea that as per provisions of Section 17 and 49 of Registration Act 1908 and Transfer of Property Act 1882 and Section 5 of Limitation Act, a family arrangement and subsequent memorandum of partition acknowledging the earlier partition would be a family arrangement and the same does not require compulsory registration. On this point reliance was placed upon judgment from Hon'ble Supreme Court in case Roshan Singh and others Vs. Zile Singh and others 1988 AIR (SC) 881.

7. I have considered the submissions made by learned counsel for appellant and also gone through the above referred judgment of Hon'ble Supreme Court and of the view that in the present case the concurrent findings have been returned by both the Courts below that document Exhibit P-1 is not a mere family arrangement having taken place between the parties rather the same created rights for the first time on the basis of said document. More so, the suit property is not an ancestral coparcenary property and as such the above authority of law of Hon'ble Supreme Court is not applicable to the present set of fact.

8. This being the Regular Second Appeal against concurrent findings of both the Courts recorded on the basis of facts and evidence available on file and as such, the same is not maintainable. There is absolutely no substantial question of law involved in this case calling for interference by this Court. Such a law was laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (dead) by LRs., 2001(3) SCC 179.**

9. In view of the above, appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 14, 2015

msd