

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

RSA-4661 of 2009 (O&M)

Date of decision: 04.05.2016

Mohinder Singh

...Appellant

Versus

Jaswant Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. A.P. Kaushal, Advocate
for the appellant.

Mr. H.S. Tuli, Advocate for
Mr. S.S. Rangi, Advocate
for the respondents.

Jitendra Chauhan, J. (Oral)

The suit for separate possession filed by the plaintiff/appellant was decreed by the trial Court, vide judgment and decree dated 24.04.2009.

2. Aggrieved against the findings of trial Court, defendant/respondents filed an appeal which was allowed by the learned Appellate Court, vide judgment and decree dated 12.11.2009.

3. The Appellate Court reversed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal has been filed by the plaintiff/appellant.

4. Succinctly, the facts of the case are that plaintiff filed a suit for separate possession by way of partition of shop/booth No.35, situated in Shopping Centre, Tripuri Township, Patiala to the extent of $\frac{1}{2}$ share of the appellant and further $\frac{1}{5}^{\text{th}}$ share of out the remaining $\frac{1}{2}$ share of his father, late Attar Singh, who died about 22/23 years back. The shop/booth in question was purchased by the appellant and his father, Attar Singh having $\frac{1}{2}$ share each and vide certificate of sale in favour of both. The plaintiff being a co-sharer spent a huge amount from his pocket for construction over the suit property and by way of present suit he wants to get his share separated by metes and bounds to the extent as mentioned above.

5. The learned counsel for the appellant has argued that the learned 1st Appellate Court has gravely erred in ignoring the findings of the trial Court. The 1st Appellate Court has not discussed and analyzed the document which had been produced by the appellant in his evidence and failed to appreciate the fact

that it is the admitted case of the respondents that the appellant and his father are the joint owner of the property having $\frac{1}{2}$ share each. He further contends that the learned 1st Appellate has wrongly reached to the conclusion that the appellant relinquished the title of the property in favour of his mother by giving an affidavit of his share. It is pertinent to mention here that it is established law that the property having value more than 100 rupees can only be transferred by way of registered sale deed/gift deed, whereas, in the instant case, there is no document on record in this context. Further, the learned 1st Appellate Court erred in ignoring the report of the Forensic Expert, whereby it has been proved that the signatures of the appellant are forged on the alleged family settlement/affidavit. The learned trial Court after considering the document Ex.P2, notice of publication, Ex.P4 sale certificate in the name of appellant and his father Attar Singh and Ex.P10, sale certificate of shop in question, has rightly held that the appellant is owner to the extent of half share in the shop and co-sharer in the share left behind his father along with the respondent to the extent of $\frac{1}{5}$ th. Therefore, the findings recorded by the 1st Appellate Court are liable to be reversed in view of the facts as enumerated above.

6. Per contra, the learned counsel for the respondents has submitted that the 1st Appellate Court has rightly set aside the findings recorded by the learned trial Court. In fact, the appellant is neither owner nor has any share in the shop in question. After the death of Attar Singh, respondent had relinquished his rights in the shop in question in favour of respondent No.4 by giving an affidavit to this effect. Appellant Nos. 2 & 3 had also executed another joint affidavit to relinquish their rights in favour of respondent No.4. Thereafter, the ownership was changed in the Municipal Corporation records. Once the appellant voluntarily entered into a family settlement with the respondent Nos. 1 to 3 in the year 1986 to get the ownership of the shop in question changed, the appellant has no right to claim ownership over the disputed property.

7. Heard, the learned counsel for the parties and perused the record.

8. The dispute is inter se the family members. Appellant is brother of respondent Nos.1 to 3 and son of respondent No.4. The appellant being co-sharer in the suit property had claimed to the extent of half share and further 1/5th share being the legal heir of late Attar Singh. Indisputably, the appellant and his father,

Attar Singh had purchased the suit property i.e. Shop No.35 situated in shopping centre, Triputi Township, Patiala in which both had half share each. The sale certificate, Ex.P10 was also on record. Attar Singh died on 11.06.1983. After his death, appellant and respondent Nos. 1 to 3 entered into family settlement in the year 1986, whereby all of them had relinquished their share in favour of respondent No.4, mother of the parties. Respondent Nos. 1 to 3 in their respective testimony have denied the claim as asserted by the appellant by stating that after the death of their father, they along with appellant have executed joint affidavits and entered into family settlement with respondent No.4 voluntarily and with free consent to get transfer the ownership of shop in question. There is no circumstance which could belie the affidavits given by the respondent Nos. 1 to 3 in support of their testimony. It is pertinent to mention here that the suit was filed in the year 2005, after 19 years of the alleged family settlement and during a long period of 19 years, the appellant never challenge the family settlement.

9. Therefore, in view of above facts and circumstances of the case, this Court is of the opinion that 1st Appellate Court has rightly dealt with the issues in the right perspective, whereby

it has been concluded that the appellant had already relinquished his right in favour of his mother in the suit property and the appellant is not entitled to separate possession by way of partition. There is no illegality or perversity in the impugned judgment of learned 1st Appellate Court.

10. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal.

Dismissed.

04.05.2016

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(JITENDRA CHAUHAN)
JUDGE