

**RSA-4851-2009**

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

**RSA-4851-2009 (O & M)**

**Date of Decision: 27.01.2016**

Kesh Raj

... Petitioner(s)

Versus

Mast Ram and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH  
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr. S.K.Rattan, Advocate for  
the appellant.

Mr. Ravinder Jain, Advocate,  
for respondent Nos.3, 5, 7 to 11 and 13.

**Paramjeet Singh Dhaliwal, J.**

This regular second appeal by plaintiff is directed against the judgment and decree dated 12.09.2006 passed by learned Civil Judge (Jr. divn.), Dasuya whereby suit filed by the plaintiff has been dismissed and against the judgment and decree dated 30.07.2009 passed by learned Additional District Judge, Hoshiarpur whereby appeal preferred by the plaintiff has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the suit.

The detailed facts are already recapitulated in the judgments

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of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff and defendants along with others are co-sharers in the suit property, detail of which is given in the head-note of plaint. The defendants have relinquished their rights in favour of the plaintiff in a family settlement and executed alleged writing/memorandum dated 18.01.1999 in the presence of the witnesses. Thus, the plaintiff has become owner in possession of the land measuring 4 kanals 10 marlas excess land to his share in the suit land. He has installed bore/tubewell in khewat No.15/2/1 (4-11) with the consent of defendants/co-sharers and also constructed room over the bore/tubewell. A partition case regarding the suit property is pending before A.C-Ist Grade, Mukerian. Only the plaintiff has raised objection regarding his excess share which has been agreed to be given to the plaintiff by defendants. It was further averred that the plaintiff requested the defendants a number of times to comply with the terms and conditions of the above said writing/memorandum, but they refused on one pretext or the other, therefore, the suit was filed.

Upon notice, defendant Nos.1, 2, 4 to 8 and 11 to 13 resisted the suit and filed written statement taking various preliminary objections. On merits, it was admitted that the plaintiff and defendants along with others are co-sharers in the suit property. However, relinquishing their rights in the suit property by the defendants in favour of the plaintiff, vide agreement/writing dated 18.01.1999, was specifically denied.

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Rather, it was pleaded that the plaintiff might have got signatures of some of the defendants by misrepresentation and fraud. No such agreement can ever be imagined. Further, agreement is illegal, void and ineffective and without any consideration. It was further pleaded that bore, if any, is in joint land of the parties. The suit property has already been partitioned by A.C-Ist Grade, Mukerian, vide order dated 02.02.2000. Other averments in plaint were denied and dismissal of suit was prayed for.

Replication was filed. On the basis of pleadings of the parties, the Court of first instance framed following issues:

- “1. Whether the plaintiff is entitled for declaration and injunction as prayed for?OPP*
- 2. Whether the plaintiff is owner in possession of suit property in terms of agreement/writing/family settlement dated 18.01.1999?OPD*
- 3. Whether the suit is bad for non-joinder of necessary parties?OPP*
- 4. Relief.”*

After appreciating the evidence, the Court of first instance dismissed the suit. Feeling aggrieved, the plaintiff preferred an appeal before the lower Appellate Court which has also been dismissed.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant submitted that following

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substantial questions of law, formulated in the grounds of appeal, arise for consideration by this Court:

- (i) *Whether the oral agreement amongst the family members/co-sharers which has been acted upon, which is later on reduced into writing required registration?*
- (ii) *Whether the judgments and decrees of the learned courts below are perverse?*
- (iii) *Whether the suit can be dismissed on the ground of non-joinder of the necessary parties when the affected parties have been impleaded in the array of respondents?*
- (iv) *Whether the admitted facts need to be proved?*

Learned counsel for the appellant vehemently contended that memorandum of partition dated 18.01.1999 (Ex.P-1) is with regard to the family partition and the same bears the signatures/thumb impressions of all the co-sharers, therefore, the same is not required to be registered and no stamp fee is required to be affixed thereupon. In support of his contentions, learned counsel relied upon ***Mukanda vs. Kura Ram and Ors.*** 2002(2) Civil Court Cases 301. He further contended that the memorandum of partition (Ex.P-1) refers to the partition which had already taken place before filing the suit. The will of members of a family who executed the memorandum of partition, is to be honoured. The Court should lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. In this regard, reliance can be placed upon ***Amteshwar Anand vs. Virender Mohan Singh and others*** AIR 2006 SC 151.

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Per contra, learned counsel for respondent Nos.3, 5, 7 to 11 and 13 vehemently opposed the contentions of learned counsel for the appellant and supported the concurrent findings recorded by the courts below with regard to alleged writing as it had never been implemented and has no substantial value in the eyes of law. He further contended that the alleged settlement was required to be registered.

I have considered the rival contentions of learned counsel for the parties.

On perusal of record and arguments advanced by learned counsel for the parties, this Court finds that following substantial questions of law arise for consideration in this appeal:

- “(i) *Whether there is a complete misreading and non-reading of alleged writing/memorandum of partition (Ex.P-1) by the courts below?*
- (ii) *Whether the alleged writing/memorandum of partition (Ex.P-1) is required to be registered and by way of family settlement, excess land can be given to one of the co-sharers?*

After hearing learned counsel for the parties and going through the judgments of the courts below, I am of the view that writing/memorandum of partition (Ex.P-1) is in past. It refers to the earlier partition between the co-sharers and the same bears the thumb impressions/signatures of all the co-sharers. The writing/memorandum of partition (Ex.P-1) has been duly proved in accordance with law. If a document is proved on record by cogent and convincing evidence of the

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marginal witnesses, the same cannot be ignored.

The implication of writing/memorandum of partition (Ex.P-1) is to be seen. The said document refers about partition already effected before the revenue authorities and thereafter memorandum of partition was written whereby plaintiff was given 4 kanals 10 marlas of land in excess to his share. It is common that when family partition takes place, excess land is given to some of the co-sharers keeping in view the value of land. There is no necessity that a family settlement must be in writing and if the same is in writing, it requires registration. The fact remains that if there is a settlement and thereafter memorandum of family settlement is written, the same is not required to be registered. In this regard, reliance can be placed upon ***Mukanda's case (supra)***.

It is relevant to point out here that the memorandum of partition (Ex.P-1) is a transaction between the members of the same family for the mutual benefit of such members. It is settled law that the courts lean in favour of holding a family arrangement instead of disturbing the same on technical or trivial grounds particularly when the parties have mutually received benefits under the arrangement. In ***Amteshwar Anand's case(supra)***, the Hon'ble Supreme Court has held as under:

*“29. The validity of the assignment was however questioned by the appellants on the ground that the first two agreements were not registered. The submission is untenable. Section 17(1) of the Registration Act, 1908 in so far as it is relevant, requires under Clause (b) thereof,*

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registration of "non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property". Sub-section (2) of Section 17 creates exceptions to the mandatory requirements of Section 17(1)(b) and (c). One of the exceptions made in Section 17(2) of the Registration Act 1908, is Clause (i). This exception pertains to "any composition deed." In other words all composition deeds are exempt from the requirement to be registered under the Act. **(See Govind Ram v. Madan Gopal, AIR 1945 PC 74, 76).** The Composition Deed in this case was a transaction between the members of the same family for the mutual benefit of such members. It is not the appellants' case that the agreements required registration under any other Act. Apart from this, there is the principle that Courts lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds particularly when the parties have mutually received benefits under the arrangement. **(See Kale and others v. Deputy Director of Consolidation and others, AIR 1976 Supreme Court 807).** Both the Courts below had concurrently found that the parties had enjoyed material benefits under the agreements. We have ourselves also re-scrutinised the evidence on record on this aspect and have found nothing to persuade us to take a contrary view. Furthermore, in this case the agreements had merged in the decree of the Court which is also excepted under sub-section 2(vi) of Section 17 of the Registration Act, 1908 [17 (2)(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and

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*comprising immovable property other than that which is the subject-matter of the suit or proceedings.”*

In view of above discussion, this Court has reached to the conclusion that there is a complete misreading and non-reading of memorandum of partition (Ex.P-1) by the courts below. The writing/memorandum of partition (Ex.P-1) does not require registration and by way of family settlement, excess land can be given to one of the co-sharers. The aforesaid substantial questions of law are answered accordingly.

In view of above, appeal is allowed, impugned judgments and decree dated 12.09.2006 and 30.07.2009 passed by the courts below, respectively, are set aside and suit of plaintiff is decreed. Consequently, the plaintiff is declared owner in possession of land measuring 4 kanals 10 marlas as detailed in head-note of plaint, in excess to his share, as per writing/memorandum of partition dated 18.01.1999 and the defendants are restrained from dispossessing the plaintiff forcibly, except in due course of law. Decree-sheet be prepared accordingly.

LCR be sent back to the concerned courts.

**27.01.2016**  
parveen kumar

**(Paramjeet Singh Dhaliwal)**  
**Judge**