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

**RSA-2024-2012 (O&M)
Date of decision : 01.12.2016**

Parhlad

... Appellant

Versus

Krishan Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the appellant.

Mr. Vikram Singla, Advocate
for respondent Nos.1 and 2.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking possession by way of partition of land contained in Khewat No.168 Khatauni No.266, Khasra No.15//31(1-4), 16//38(0-14) kitte-2 total area 1 kanal 18 marals gairmumkin house situated at village Nangal Chaudhary Tehsil Narnaul as per jamabandi 2003-04 to the extent of 1/3 share as owner and after partition, separate as owner be given and suit for permanent injunction restraining the respondents that the respondent should not raise construction on more than their share of the property without partition by force and should not alienate, mortgage, gift in any way to any body else more than the share, has been dismissed by both the Courts below.

Mr. Munish Gupta, learned counsel appearing on behalf of the

appellant-plaintiff submits that the suit aforementioned was filed by the appellant-plaintiff for claiming declaration of ownership to the extent of 1/3rd share along with defendant Nos.1 & 2 another 1/3rd share with defendants Nos.3 to 6 also another 1/3rd share, being successors-in-interest of Bhura.

He further submits that the property in the record was shown to be in joint ownership. However, the defendants, in the written statement had come out with family settlements dated 28.05.1967 and 11.05.1968. Though the family settlement dated 28.05.1967 did not reflect in the revenue record.

He further submits that both the Courts below have committed illegality and perversity in not referring to the reference to the judgment and decree 06.09.1978 (Ex.P-7 & Ex.P-8) as outcome of suit filed by all the three sons of Bhura against their sisters seeking declaration qua ownership to the extent of 1/3rd share, wherein, the sisters conceded. Had there been any actual family settlement, the aforementioned settlement would have seen the light of day, in essence, the settlements were nothing, but the coined documents, much less, could not have been entered into as Bhura was alive at that relevant point of time and being not signatory to the same, as Bhura died subsequent to that i.e. on 25.12.1968. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Full Bench judgment of this Court rendered in **“Ram Chander V/s Bhim Singh & others” and Rohtash Singh & another V/s Ram Niwas & others” 2008 (3) RCR (Civil) 685**, to contend that once it is a joint khata, in case of any oral settlement not reflected, the presumption of jointness would be there and therefore, the aforementioned settlements, until and unless not proved

through direct, cogent and corroborative evidence, could not have been looked into.

Per contra, Mr. Vikram Singh, learned counsel appearing on behalf of the respondents Nos.1 & 2-defendants submits that the concurrent findings of fact cannot be looked into until and unless there is gross illegality and perversity. Both the Courts below have heavily relied upon the aforementioned settlements. The parties have already been living as per the arrangement which was in the knowledge of the appellant-plaintiff, who had never taken any recourse till the filing of the suit. The filing of the suit was nothing, but an act of greed, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and as well as gone through the judgments and decrees of the Courts below and of the view that the judgment and decree dated 06.09.1978 (Ex.P7 & Ex.P8) have not been referred to while adjudication of the *lis*, particularly by the lower Appellate Court being the last Court of fact and law. The lower Appellate Court was enjoined upon an obligation to frame the points of determination as per the provisions of Order 41 Rule 31 of the Code of Civil Procedure. Having failed to do so, there is an abdication, much less, fallaciousness. The parties to the *lis*, particularly the appellant-plaintiff has, thus, prevented from not espousing the grievance by filing a statutory appeal.

Without delving upon the merits and demerits of the settlement and as well as the judgment and decree, aforementioned, I deem it appropriate to remand back the matter by setting aside the judgment and decree of the lower Appellate Court and accordingly, the same is hereby set

aside and the matter is remitted back to the lower Appellate Court with a direction to decide the appeal in accordance with law by taking into consideration all the documents on record, much less, pleadings preferably within a period of 6 months from the date of the receipt of the certified copy of the order.

Learned counsel for the parties and as well as the parties are directed to appear before the lower Appellate Court on 20.12.2016.

With the aforesaid observations, the appeal stands disposed of.

01.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No