

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

RSA No.1175 of 2016

Date of decision: 17.03.2016

Mahender Pal Singh

... Appellant

Versus

Smt. Chander Prbha and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

AMOL RATTAN SINGH, J.

This is the second appeal filed by one of the defendants in a civil suit filed by the 1st respondent herein, by which she sought partition of the suit property and consequent separate possession thereof.

The appellant and respondents No.1, 3 and 5 herein, are all siblings, being the children of the late Harpat, who was the owner in possession of a residential house constructed on a 500 square yard plot, in the Defence Colony, Hisar. Respondent No.2 is the mother of the appellant and the other respondents, being the widow of the late Harpat.

2. It was claimed in the suit that upon the death of Harpat, the appellant and the five respondents all became co-sharers of the suit property, to the extent of 1/6th share each. It was held by the Courts

below that the present appellant (defendant No.5 in the suit), had failed to prove any family settlement, by which he alone had been made the exclusive owner of the suit property, with no share whatsoever given to the other respondents.

3. The appellant had stepped into the witness box himself and in cross-examination had admitted that the plot and the house were purchased and constructed respectively, by Harpat, with his own income, and was thus his self-acquired property.

The appellants' contention was that a family settlement took place in 1993-94, in the presence of his late father, his brother Jagdish Pal (respondent-defendant No.4), Jagdish's father-in-law and the Sarpanch of village Gavad. However, no evidence whatsoever was led, in support of that contention.

In view of the above, and also because of the fact that no transfer deed in favour of the appellant was ever executed during the lifetime of Harpat, before his death on 04.01.2000, it was held that factually no such family settlement ever took place.

4. Further, it was found by way of documentary evidence (Exs.P4 to P16), that the house stood transferred, by the Haryana Urban Development Authority), after due procedure, in favour of all legal heirs of Harpat, which transfer had not been challenged before any higher authority of HUDA, by the appellant.

In view of the above, the suit of the 1st respondent herein, was decreed in her favour, and she and her mother and other siblings, were held entitled to a 1/6th share in the suit property.

However, only a preliminary decree was passed by the learned Civil Judge with regard to the entitlement of 1/6th share each, of the parties before him. The final decree, was left to be passed at a later stage, by which the mode of partition would be decided.

5. In appeal, the first Appellate Court on the same reasoning, and by referring to the cross-examination of the appellant in detail, found that he himself had admitted that the suit property, as a matter of fact, devolved upon all the legal heirs of Harpat and even his agricultural land in Sirsa and in Rajasthan devolved to the extent 1/6th share each, to the appellant and the respondents. (However, that agricultural property not being subject matter of the suit out of which the present appeal arises, no comment whatsoever, in that regard, is to be made by this Court).

The learned first Appellate Court also found that the contention of the appellant in his written statement, that the house was given to him by his father on account of the fact that he was unemployed, with all the other children well settled, was also factually incorrect because the appellant-defendant No.5 was employed in the electricity department, earning a salary of Rs.7850/- per month.

Thus, agreeing with the findings of the learned Civil Judge (Junior Division), Hisar, the learned lower Appellate Court dismissed the first appeal filed by the appellant.

6. Before this Court, learned counsel for the appellant, upon query by this Court, fairly submitted that he could not point out any error in the judgments of the Courts below, in the face of the evidence

discussed. However, he pointed to the judgments to say that the suit property being a 500 square yards house, was not physically partitionable in terms of the allotment letter in favour of Harpat, wherein it is stated that the estate would not be fragmented.

He submits that since the suit has been decreed to the extent of 1/6th share each in favour of the appellant and the respondents, the same is contrary to the conditions of the allotment letter by which the suit plot was allotted to the late Harpat.

7. I find no force in the aforesaid argument, because in the judgment and decree of the Courts below, there is no specific direction that the suit property must be physically partitioned and each of the 1/6th shares be accordingly apportioned only by way of such partition.

The reason for passing a preliminary decree by the learned Civil Judge was specifically so as to subsequently determine the mode of partition. As a matter of fact, the learned first Appellate Court has specifically referred to condition No.12 of the allotment letter, Ex.P1, to hold that a physical partition is not permissible, which would be an issue that would be gone into by the Civil Judge while passing the final decree, determining the mode of partition. Meaning thereby, obviously, that if the suit property is not legally partitionable, the solution would either be by way of a complete sale of the property to a third party, or by any of the parties to the suit, *inter se* purchasing the share (s) of the other(s).

No further comment is made in that regard as what ever solution may be available before the learned Civil Judge at the time of

passing the final decree, arguments with regard thereto would be addressed at the appropriate stage, and in case any of the parties is aggrieved by any order of the first Court, on the ground that is contrary to any statute or statutory provision, or for any other reason, naturally, such person(s) would have an appropriate remedy at that stage.

In view of the above, I find no merit in the appeal, which is dismissed *in limine*, with no order as to costs.

March 17, 2016

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(AMOL RATTAN SINGH)
JUDGE