

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

RSA-1365 of 2016 (O&M)

Date of decision: 31.03.2016

Bhupinder Kumar

...Appellant

Versus

Ravinder Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Shailendra Sharma, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-3845-46-C of 2016

Keeping in view the averments made in the applications, the same are allowed. The deficiency in Court fee is allowed to make good and the delay of 20 days in filing the present appeal is hereby condoned.

RSA-1365-2016

The suit for partition and permanent injunction filed by the plaintiff/respondent (for short 'the respondent') was decreed by the trial Court, vide judgment and decree dated

25.04.2014.

2. Aggrieved against the findings of trial Court, the defendant/appellant (for brevity 'the appellant) filed an appeal which was dismissed by the learned 1st Appellate Court, vide judgment and decree dated 03.11.2015.

3. The 1st Appellate Court affirmed 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 appellant.

4. It is contended that both the Courts below have gravely erred in not appreciating the fact that the suit was clearly barred by limitation as the same was filed in the year 2012, whereas, the mother of the respondent expired in the year 1995 and the father expired in the year 1996. The right of succession accrued to the respondent in the year 1995 and 1996. The learned counsel refers to Section 65 of Limitation Act, which prescribes limitation of 12 years for possession of immovable property or any interest therein based on title. Therefore, the suit is not maintainable and both the Courts below have ignored the above aspect of the matter.

5. I have heard the learned counsel for the appellant.

6. Admittedly, the dispute is inter se the brothers. The property in question i.e. H.No.16/245 and 16/256 had been owned

by the father and H.No.16/248 had been owned by the mother of the parties. The appellant had been residing in H.No.16/248, Baldev Nagar, Ambala City and the remaining two houses were let out on rent. After the death of parents, the appellant had been looking after the property in dispute, as the respondent had been serving at Faridabad.

7. The main grouse of the appellant is that after the death of mother, the respondent had taken all the ornaments and at the time of death of father, the respondent also took Rs.1,75,000/- in the absence of the appellant. In the year 1996, in the presence of relatives, an oral family settlement took place between the parties, wherein it was settled that as the respondent had taken Rs.1,75,000/- from his father, therefore, the houses bearing No. 16/245 and 16/248 would fall in the appellant's share and the other house bearing No.16/256 would fall in the share of the respondent, which was sold by him to Gulshan, who was a tenant in the said house and now the respondent had no right in the share of the appellant. However, a bare perusal of the record shows that the appellant had taken contradictory stand during his examination. In his cross examination, the appellant had admitted that he gave Rs.1,75,000/- to the respondent, however, no receipt or any document had been produced on record to prove the factum of

payment. The amount paid was allegedly withdrawn from the Post office, but he could not produce either the account book or any other document. Further DW-2, Gulshan to whom the respondent had sold the H.No.16/256 for a consideration of Rs.60,000/- failed to show the receipt of payment, which proves that he deposed only at the behest of the appellant. As per the appellant, the oral agreement was arrived at in the presence of relatives, however, none of them was examined to establish on record the oral agreement. Therefore, in the absence of any convincing and cogent evidence, both the Courts have rightly held the parties to entitle one half share in the suit properties. It is well settled law that the succession never remain in abeyance. It passes on to the successors in the event of a death of a person. On the death of his father and mother, plaintiff Ravinder Kumar and defendant Bhupinder Kumar both succeeded to the inheritance of their parents. Both became joint owners of the properties left by their parents. Even if a co-sharer is not in physical possession of the houses, but he is in constructive possession of the houses. Every co-owner is considered joint owner in possession of the property left by their parents, who died intestate. Article 65 of the Limitation Act will not apply in this case. A co-sharer/co-owner can get it partitioned at any time. No oral family settlement allegedly arrived at between

the parties has been proved. Possession of one co-sharer is considered possession of all. So, the plaintiff has every right to get it partitioned by metes and bounds.

8. Considering all the facts and circumstances of the case, this Court finds that the contentions raised on behalf of the appellant have no merit and there is no scope for interference in the well reasoned judgments passed by the Courts below.

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

Dismissed in limine.

31.03.2016

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(JITENDRA CHAUHAN)
JUDGE