

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

RSA No.3537 of 2016 (O&M)
Date of decision : 26.09.2016

Ram Pal Sharma

...Appellant

Versus

Sat Pal Sharma and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. V.K. Sandhir, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent finding of fact and law, whereby suit for possession by way of partition in respect of estate of Hari Chand Sharma, has been decreed and all the parties have been held to be owner to the extent of 1/4th share.

Mr. V.K. Sandhir, learned counsel appearing on behalf of appellant-defendant submits that respondent-plaintiff had set up a Will dated 22.12.2003 executed by Mr. Sharma, bequeathing his 1/4th share amongst all the siblings. In fact, S.P. Sharma-plaintiff No.1 had left the house in the year 1983, during the lifetime of his father and had taken the share by constructing his own House at 17-B, Gokal Nagar, Backside Gopal Mandir, Majitha Road, Amritsar, whereas plaintiff Nos.2 and 3 had also left the house by taking their share. Appellant served the deceased father and,

therefore, entire property would fall to his share, but, this aspect has been ignored by the Courts below.

I have heard learned counsel for the parties and appraised the paper book.

It is conceded position on record that property belonging to the father, was purchased way back in the year 1987. Father executed the Will dated 22.12.2003 and bequeathed the entire property equally amongst his four sons. Even if the Will is to be discarded then also by way of natural succession, all are entitled to succeed with same very share i.e. 1/4th share each. Moving out of the house does not exclude the share of the owner whose right of succession opened on the demise of the father.

In my view, preliminary decree drawn absolutely as per the natural succession. No contrary evidence has been led that any decree or sale has been executed by the father in favour of the appellant-defendant.

For the foregoing reasons, I do not intend to differ with the findings under challenge.

Accordingly, present appeal is dismissed.

26.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No