

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

**R.S.A No. 1126 of 2014(O&M)
Date of decision :11.01.2016**

Gurdev Singh

..... Appellant

Versus

Mr. Gursroop Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rajiv Joshi, Advocate
for the appellant.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 23.10.2013 passed by the learned District Judge, Jalandhar, vide which the appeal preferred against the judgment and decree dated 17.09.2012 passed by the learned Civil Judge (Sr. Division), Jalandhar, has been dismissed.

2. Appellant-plaintiff Gurdev Singh has filed the suit for separate possession of ½ share by way of partition by metes and bounds of house no. 30/1 measuring 43'6" x 76 feet as depicted in red colour in

the site plan attached with the plaint. Originally, Ranbir Singh @ Rania, the father of plaintiff was owner of the house in dispute. He executed a valid Will dated 31.03.1976 in favour of plaintiff, his mother Smt. Ram Rakhi, Gurbir Singh (predecessor of the defendants no.1 to 4) and Paramjit Singh (defendant no.5) in equal shares. He expired on 13.11.1986. After his demise, the plaintiff, his mother Smt. Ram Rakhi, Gurbir Singh (the predecessor of the defendants no.1 to 4) and Paramjit Singh (defendant no.5) became owner of the suit property to the extent of $\frac{1}{4}$ share each. Smt. Ram Rakhi also executed a valid Will dated 28.03.1988 in favour of the plaintiff. She died on 16.10.1995. After inheriting her share, the plaintiff became owner of $\frac{1}{2}$ share in the suit property. It was further pleaded that the family partition deed 13.08.1996 was executed between the parties. But, the property was not partitioned by metes and bounds and the site plan thereof was wrong and ambiguous which was prepared at the instance of Gurbir Singh. The said partition deed was never acted upon and suit property continued to be joint. The plaintiff is in possession of northern-eastern portion and the first floor thereof. The defendants started collecting building material to raise construction in the disputed property. Hence this suit.

3. The suit was contested by the respondents-defendants on the grounds *inter alia* that property in dispute was mutually partitioned by way of family partition on 13.08.1996. It was separated into different portions as shown in the site plan attached with the family partition. They were in possession in separate portions on the basis of a family partition. They also disputed the validity of the Will dated 28.03.1988 allegedly

executed by Smt. Ram Rakhi in favour of the appellant-plaintiff.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court after filing of the replication by the plaintiff-appellant:-

1. Whether the plaintiff is entitled to separate as prayed for?OPP
2. Whether the plaintiff has no locus standi to file the present suit?
OPD
3. Whether there is no cause to file there present suite?OPD
4. Whether the site plan attached with the plaintiff is incorrect?
OPD
5. Whether the plaintiff is stopped to file the present suit by his own acts and conducts?OPD
6. Whether the present suit is not maintainable?OPD
7. Whether the present suit is bad for non-joinder of necessary parties?OPD
8. Relief.

5. On appreciating the evidence and material on record, the learned trial Court dismissed the suit. Appeal filed by the plaintiff-appellant was also dismissed by the learned First Appellate Court. Hence this Regular Second Appeal.

6. I have heard Mr. Rajiv Joshi, Advocate, learned counsel for the appellant and have meticulously examined the record of the case.

7. Learned counsel for the appellant contended that the learned First Appellate Court came to the conclusion that the Will Ex.P-1 was validly executed by Smt. Ram Rakhi in favour of the appellant-plaintiff. But, the appellant-plaintiff was non-suited by the learned First Appellate Court by relying upon the partition deed dated 13.08.1996 Ex.D-2 that the partition had already taken place between the parties.

8. Learned counsel for the appellant-plaintiff contended that the family partition dated 13.08.1996 Ex.D-2 cannot be taken into consideration as the same was unregistered document. As per the case of the defendants, the partition has taken place by virtue of the document dated 13.08.1996 Ex.D-2, which requires compulsory registration. Hence, the same is inadmissible in evidence. He further contended that it was only a temporary arrangement between the parties. Moreover, the said partition deed was never acted upon. Appellant-plaintiff has become owner to the extent of $\frac{1}{2}$ share of the house in dispute, which was never partitioned by metes and bounds. So, he was entitled for the separate possession to the extent of his share.

9. I have duly considered the aforesaid contentions.

10. The existence and execution of the family partition Ex.D-2 dated 13.08.1996 is not disputed even as per the pleadings of the appellant-plaintiff as the reference of this partition deed has been very much given even in the plaint. Appellant-plaintiff has also categorically admitted in the cross-examination that he identified his signatures as well as signatures of Paramjit Singh and Gurbir Singh on Ex.D-2 and Ex.D-3, which are correct. He further categorically admitted that it is correct that the legal heirs of Ranbir Singh has divided and partitioned the property vide Ex.D-2 and Ex.D-3. But, voluntarily stated that it was a temporary arrangement. He further admitted that the portion falling into the respective shares of the parties including himself were duly marked in the site plan Ex.D-3 and mentioned in Ex.D-2. Thus, the plaintiff-appellant has categorically admitted the family partition Ex.D-2 and site plan Ex.D-

3, which bears his signatures as well as the signatures of other co-owners.

11. The plea raised by the learned counsel for the appellant that it was only a temporary arrangement carries no substance as the separate portions of all the co-sharers has been shown, which is never so in case of the temporary arrangement.

12. The admissibility of the family partition Ex.D-2 has been assailed on the ground that the same was compulsorily registrable and has not been got registered in-accordance with law. The learned First Appellate Court has discussed this issue in detail. There is no dispute with the proposition of law that if, a document tantamount to partition in presenti, it will require the compulsory registration under Section 17 of the Registration Act, 1908. However, if, the same is only a memorandum of partition just to recognize the family partition which has already taken place, then the said document will not require registration. The learned First Appellate court has rightly relied upon case **Narendra Kante Vs. Anuradha Kante and others 2010(1) RCR (Civil) 465**, wherein the Hon'ble Apex Court has laid down that subsequently reducing into writing as a memorandum of the oral partition of the property will not be an actual deed of partition, the same can be relied upon even though it was not registered. No authority to the contrary could be cited by learned counsel for the appellant.

13. The next question arises as to whether the family partition Ex.D-2 is a partition deed in presenti or only the memorandum of the partition which had already been effected. In order to arrive at this conclusion, we have to examine the contents of the document Ex.D-2,

which shows that even during the lifetime of Smt. Ram Rakhi, the house in question was divided by the parties by mutual consent by way of family settlement/partition and they came into the exclusive possession of their respective portions. It is further mentioned that now the parties have mutually decided to execute the family partition deed to make the partition made in between them in writing. So, the family partition deed was executed alongwith site plan showing their respective portions falling to the share of each party. Thus, the family partition deed Ex.D-2, clearly establishes that the house in question was partitioned/divided during the lifetime of Smt. Ram Rakhi. Even, the parties came to the exclusive possession of their respective shares. Thus, the deed Ex.D-2 is only a memorandum of partition recognizing the transaction of the past partition, which has mutually taken place between the parties as a result of family settlement/partition and it is not the partition in present between the parties. Consequently, it will not require the registration and the same can be validly taken into consideration. The aforesaid evidence depicts that the parties have already mutually partitioned the house in dispute. So, the plaintiff-appellant has no right to again seek the partition of the house in dispute.

14. Thus, the concurrent findings of the fact recorded by the learned Courts below do not suffer from any illegality calling for any interference by this Court while exercising the limited jurisdiction in the Regular Second Appeal. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed in *limine* with no orders as to costs.

January 11, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**