

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

RSA-1390 of 2014 (O&M)

Date of decision: 07.04.2016

Reema and others

...Appellants

Versus

Shiv Narain and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Dr. Praveen Hans, Advocate
for the appellants.

Jitendra Chauhan, J. (Oral)

CM-3363-C-2014

Learned counsel contends that Court fee has been made good. Delay of 33 days in making up the deficiency is condoned. CM stands disposed of.

RSA-1390-2014

The suit for possession filed by the husband (since deceased) of appellants/plaintiffs was dismissed by the trial Court, vide judgment and decree dated 12.10.2010.

2. Aggrieved against the findings of trial Court, the appellants being legal heirs of original plaintiff, Anil Kumar filed an appeal which was dismissed by the learned 1st Appellate Court,

vide judgment and decree dated 11.09.2013.

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 appellants.

4. It is contended that both the Courts below erred while ignoring the compromise dated 13.12.2002, Ex.PW6/1, arrived at between Kailash Chand and Anil Kumar with regard to the property in dispute i.e. shop measuring 1' x 8'-6" and the chabutra measuring 10'x3" x 2'-6". The parties to the present litigation had earlier entered into a compromise in a civil suit No.571 dated 09.11.2002, whereby the property in dispute fell to the share of Anil Kumar. He further contends that both the Courts below have ignored the family settlement between the parties qua the properties including the shop in dispute, whereby the same had been mutually partitioned, vide memorandum of partition executed on 22.04.1988, Ex.P6, which was confirmed vide judgment and decree dated 28.04.1988, Ex.P7 passed in civil suit No.191 of 1988, however, both the Courts below have erred in not considering the decision passed in Civil Suit No.191 of 1988. The respondents have duly admitted the memorandum of partition executed on 22.04.1988 and judgment & decree dated 28.04.1988,

but the same has not been considered by the Court below.

5. Heard, the learned counsel for the appellants.

6. The appellants being legal heirs of Anil Kumar have claimed their possession over the disputed property on the basis of oral mutual settlement dated 01.07.1994 and family settlement, vide memorandum of partition executed on 22.04.2008 which was confirmed vide judgment and decree dated 28.04.1988, Ex.P7.

Admittedly, the parties to the suit were brothers. The onus to prove his claim was upon the plaintiff that he is owner of the shop in dispute, whereas, in his cross examination, he admitted that the shop in dispute was covered and the same was rented out to Rajbir by his father, Des Raj, which means that the shop in dispute was constructed by Des Raj and not by the plaintiff as alleged by him. He had also admitted that platform (chabutra) was never partitioned and the portion of the chabutra in front of his shop, was owned by him. He further admitted that the respondents/defendants had been running tobacco shop in the disputed shop. Thus his own testimony was contrary to the pleadings of the plaint as set out by him. Furthermore, the appellants had relied upon memorandum of partition executed on 22.04.1988, Ex.P6, which was confirmed vide judgment and decree dated 28.04.1988, Ex.P7 passed in civil suit No.191 of 1988, however, there is no mention of shop in

dispute in the above said documents. Neither any chabutra nor any shop was mentioned in the judgment and decree dated 28.04.1988, Ex.P7. Further, the plaintiff had stated that he was owner on the basis of family settlement dated 01.07.1994 but in his cross examination, he had stated that the settlement took place on 20.07.1994. Neither any evidence has been adduced to prove the oral settlement dated 01.07.1994 nor it has been proved that the shop cum chabutra was ever partitioned. A perusal of the record further reveals that the plaintiff had filed an application under Order 1 Rule 10 CPC in civil suit No.141 of 2003 titled 'Shiv Narain Vs. Municipal Council, Jind', wherein he did not make any reference of any family settlement amongst all the brothers on 01.07.1994, which also shows the contradictory stand of the plaintiff. Thus, in the absence of any cogent or convincing document or evidence, this Court is of the opinion that both the Courts below have rightly non suited the appellants.

7. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. Therefore, this Court finds that the contentions have no merit as they only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from

consideration, nor there is any misreading of evidence. No substantial question of law arises. Accordingly, the present appeal fails and same is hereby dismissed in limine.

07.04.2016

atulsethi/sumit.k

(JITENDRA CHAUHAN)
JUDGE