

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

R.S.A. NO.3182 OF 2014

DATE OF DECISION: FEBRUARY 29, 2016

Parveen

.....Appellant

VERSUS

Darshan Devi and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. Rajesh Bansal, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 22.11.2011 passed by the Civil Judge (Junior Division), Sonipat, whereby the suit for possession by way of partition of the suit land, as preferred by the appellant-plaintiff, stands dismissed, appeal against which filed by him has also been dismissed by the Additional District Judge, Sonipat, on 12.03.2014.

It is the contention of learned counsel for the appellant that the Courts below have not appreciated the writing dated 29.03.1994, which finds mentioned in the family settlement dated 16.05.1995 (Ex.D1). According to the writing dated 29.03.1994, the house was to go to the parents and all the eight brothers were entitled to a share in the said house.

He contends that in the family settlement dated 16.05.1995 (Ex.D1), there is

no mention with regard to the house and, therefore, it was not included in the same. Therefore, the relinquishment of the appellant-plaintiff, even if assumed to have been so as per the family settlement, Ex.D1, would only be regarding the other properties and not the house, which finds mentioned in the writing dated 29.03.1994. His further submissions is that parents of the appellant-plaintiff have not signed the writing as also the family settlement and, therefore, it cannot be binding upon the parties as they had a share in the property in dispute while they were alive. He, thus, contends that the findings as recorded by the Courts below cannot sustain and liable to be set-aside.

I have considered the submissions made by learned counsel for the appellant and with his able assistance have gone through the impugned judgments but find myself not in agreement with what has been asserted by the counsel.

As per the family settlement dated 29.03.1994, on the basis of which the appellant-plaintiff is claiming that the house, in which his parents were residing, was to be retained by them during their life time and thereafter it was to be divided into their eight sons. That writing has not been proved as it is a marked document. However, even if the said writing dated 29.03.1994 as signed by all the brothers and not the parents stands superseded by family settlement dated 16.05.1995, which is of a subsequent date, in the said settlement, which is qua the non-payment of ₹2,30,000/-, which was the share of the appellant-plaintiff, there is a clear recital that he would not be entitled to any share in the property of their parents in the event of non-payment of said amount, which admittedly the appellant-plaintiff has not paid. The contention of the learned counsel for the

appellant that this would not include the house, which remained with the parents as per the writing dated 29.03.1994, cannot be accepted as there is no mention in the said family settlement with regard to the said house and it is mentioned that the appellant-plaintiff would not have any share in the property of the parents.

The assertion of counsel for the appellant that no proof has been produced by the respondent-defendants that they have in fact discharged the liability of ₹16 lacs, an amount which was to be paid to the creditors, cannot be accepted as there is no dispute raised by him in this regard in the pleadings. So far as assertion as made by counsel that onus was upon the respondent-defendants to prove it, since there is no dispute raised on this aspect, there was no occasion for them to prove it otherwise.

As regards the contention of learned counsel for the appellant that the appellant-plaintiff is entitled to the share in the ancestral land because their parents have not signed the family settlement or the writing dated 29.03.1994, suffice it to say that the parties have accepted the said document to be genuine and valid, especially when admittedly father died on 05.05.1998 and mother on 10.10.1999. There is no challenge to the writing dated 29.03.1994 and family settlement dated 16.05.1995 (Ex.D1) in the suit. The validity of the same, therefore, cannot be doubted and in any case, the appellant-plaintiff has himself admitted in his deposition that the stamp paper, upon which the family settlement had been written, was issued in his name and further the said document is signed by him. Although a plea was taken that the agreement and the family settlement was a result of coercion, but since the said agreement has not been challenged and no evidence has been led in this regard, the said assertion has also to be

negated.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

February 29, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE