

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

**RSA No.3802 of 2014 (O&M)
Decided on: 29.04.2016**

Baldev Singh (now deceased) through his LRs

....Appellant

Versus

Gurmej Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kanwal Goyal, Advocate
for the appellant.

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

REKHA MITTAL, J.

The present appeal has been directed against the judgments and decrees passed by the Courts below whereby suit filed by the appellant was dismissed by the learned trial Court and the appeal preferred against the judgment and decree dated 04.08.2009 passed by the trial Court did not find favour with the Appellate Court of Additional District Judge, Jalandhar.

Hazara Singh son of late Sh. Hukam Singh, father of the plaintiff/appellant was the owner of suit land situated in village Rohjari, Tehsil and District Jalandhar, detailed in headnote of the plaint. He executed sale deeds bearing No.43/1 dated 15.04.1999 in regard to land measuring 32 kanals 08 marlas and No.125/1 dated 04.05.1999

regarding land measuring 08 kanals 07 marlas registered at Sub-Tehsil Bhogpur, District Jalandhar. The plaintiff/appellant challenged the aforesaid sale deeds being illegal, null and void, having been got executed fraudulently thus claiming that he is equal shareholder in land measuring 56 kanals 15 marlas as per agreement/family partition deed dated 27.09.1998 and supplementary partition agreement dated 28.10.1998.

Hazara Singh-defendant No.1 and Dhan Kaur his wife-defendant No.6 filed a joint written statement raising certain legal objections *qua* maintainability, *locus standi*, valuation for the purpose of Court fees and jurisdiction, concealment of true and material facts, etc. On merits, it was pleaded that by using illegal means, defendant No.1 was pressurized by the plaintiff to prepare agreement dated 27.09.1998 but it was never acted upon and later the same was revoked. It is denied that any supplementary family partition dated 28.10.1998 was executed by defendant No.1. It is further averred that being self-acquired property of defendant No.1, he had every right to alienate the same and he alienated the property through registered sale deeds in favour of defendant Nos. 2 to 4.

Defendant Nos.2 to 4 (brothers and sisters of the plaintiff) filed their separate written statement almost in line with the allegations set-up in the written statement filed by defendant Nos. 1 and 6. However, defendant No.5 (another brother of the plaintiff) admitted his claim and raised no objection if suit of the plaintiff is decreed.

The learned trial Court, on giving thoughtful consideration

to rival submissions made by counsel for the parties, in the light of pleadings, evidence on record, issues framed for determination, negatived claim of the appellant/plaintiff and the sale deeds dated 15.04.1999 and 04.05.1999 executed by Sh. Hazara Singh (erstwhile owner) in favour of defendant Nos.2 to 4 (his sons and daughters) were upheld. As has been noticed hereinbefore, the findings recorded by the trial Court were affirmed in appeal.

There is no dispute *qua* relationship of the parties who are members of the family of Sh. Hazara Singh and Smt. Dhan Kaur. It has not been denied that the suit land is the self-acquired property of Sh. Hazara Singh (since deceased). The appellant sought to assail the sale deeds executed by Sh. Hazara Singh on the premise that prior to execution of the sale deeds, Hazara Singh had partitioned the suit land by way of a family settlement dated 27.09.1998, therefore, he was not competent to alienate the land in question.

Defendant Nos.1 and 6 in the written statement have not denied existence of family settlement dated 27.09.1998 but it was averred that the agreement dated 27.09.1998 was got prepared from defendant No.1 by illegal means, under force and coercion exercised by the plaintiff and the same was later revoked.

On the asking of the Court, counsel for the appellant produced a copy of the agreement dated 27.09.1998. A plain reading of the agreement would make it evident rather leaves no manner of doubt that the same was a settlement made in present meaning thereby that it is not a memo of partition regarding any past transaction. Even

otherwise, it is not the plea of the appellant/plaintiff that partition was effected earlier but the family settlement was reduced in writing later. The agreement being a document creating and extinguishing right in immovable property cannot be admitted in evidence for want of registration, envisaged under Section 17 of the Indian Registration Act. That being so, the appellant cannot claim any right in suit property on the basis of agreement dated 27.09.1998 or supplementary agreement dated 28.10.1998. As soon as the agreement dated 27.09.1998 is taken out of consideration, nothing survives in favour of the appellant to assert any right in the suit property, admittedly owned by Sh. Hazara Singh. In this view of the matter, I find myself unable to differ with the findings recorded by the Courts below much less to hold that the present appeal gives rise to a substantial question of law for adjudication.

For the aforestated reasons, finding no merit, the appeal fails and is accordingly dismissed with no order as to costs.

29.04.2016
yakub

(REKHA MITTAL)
JUDGE