

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

1. RSA No.3614 of 2011 (O&M)
Date of decision : 07.12.2017

Nand Kishore ...Appellant

Versus

Jugal Kishore (deceased) through his LRs and others ...Respondents

2. RSA No.3665 of 2011 (O&M)
Date of decision : 07.12.2017

Nand Kishore ...Appellant

Versus

Jugal Kishore (deceased) through his LRs and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for the appellant.
(In both appeals)

Mr. Y.P. Singla, Advocate for respondent Nos.1, 3 and 8
(In both appeals)

Mr. Sanjay Verma, Advocate for respondent No.4.
(In both appeals)

ANIL KSHETARPAL, J. (ORAL)

By this order, I shall be disposing of RSA Nos.3614 and 3665 of 2011, arising from a connected suits filed by the same parties.

The plaintiff-Jugal Kishore had filed two suits for a separate possession by way of partition of the two houses. It was the case of the plaintiff that the property belongs to his mother and after her death, the plaintiff is co-owner in the property.

On the other hand, the defendants-appellants pleaded that he is

exclusive owner in possession of the property as in the family settlement, he had paid off ₹15,000/- in the year 1980 to remaining two brothers.

Learned trial Court dismissed the suits. However, learned First Appellate Court after re-appreciation of the evidence available on the file decreed both the suits and held that oral family settlement as alleged has not been proved. The Court has further held that the payment of ₹15,000/- is also not established on the file.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below as well as the records of the Courts below.

Learned counsel for the appellant has submitted that although there is no written family settlement, however, one can enter the family settlement in the year 1980 from following circumstances:-

1. Sisters had relinquished their share in the agricultural land when there was partition between the brothers.
2. It is only the defendant-appellant who has raised construction and is in exclusive possession thereof and at that time, no objection was raised by the plaintiff-respondents.
3. The plaintiff would not have waited for more than 20 years after the partition of the agricultural land to seek his share in the residential house.
4. The parties are living separately.
5. The plaintiff did not file any replication to the written statement filed by the defendants-appellant.

On the other hand, learned counsel for the respondents has

submitted that the parties were in litigation and the plaintiff had to take possession of his share of the agricultural land after the Competent Court had partitioned the agricultural land through police help in the year 1979 and, therefore, there cannot be any oral family settlement in the year 1980.

The circumstances pointed out by the learned counsel even taken together would not help the Court in arriving at a conclusion that there was a family settlement between the brothers and the defendant-appellant had paid ₹15,000/- in the year 1980 to the remaining two brothers. No doubt, the sisters had relinquished their share in the agricultural land, however, it is not in dispute that in RSA No.3665 of 2011, two sisters had joined plaintiff-Jugal Kishore in filing the suit for possession by way of partition. Had there been any family settlement, sisters would not joined as plaintiff with Jugal Kishore, plaintiff No.1.

Learned counsel for the appellant has further tried to impress this Court by asserting that it is only the defendant-appellant who had raised the construction. He wants the Court to draw inference that construction was raised by the defendant-appellant after settlement.

In the considered opinion of this Court, merely because the construction has been raised by the defendant-appellant, the inference as sought by the learned counsel for the defendant-appellant cannot be drawn. Once the land underneath the house belongs to all the brothers, the defendant cannot claim exclusive ownership only because the construction has been raised by him.

Next argument of the learned counsel is that the plaintiff would not have waited for more than 20 years to seek the partition of the house.

In the considered opinion of this Court, once the parties are co-owners, it is always depends upon the plaintiff as to when he files a suit seeking partition. It has been pleaded by the plaintiff that now the defendant-appellant is not permitting the plaintiff to properly use the property and, therefore, they are seeking partition.

No doubt, the parties are living separately, however, merely because the parties are living separately, it is not possible to conclude that the parties have entered into a family settlement.

Last argument of the learned counsel for the defendant-appellant is that the plaintiff did not file any replication to the written statement.

Filing of the replication is not necessary. The plaintiff had already pleaded his case in the plaint. Merely because a replication was not filed, it cannot be assumed that the case as pleaded in the written statement stood admitted.

In view of the discussion made above, this Court does not find any good ground to interfere with the finding of fact arrived at by the First Appellate Court.

Hence, both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

07.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No