

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

**RSA 2827/2015 (O&M)
Date of decision:13.12.2017**

Pankaj Kumar

.....Appellant

v.

Ramesh Kumari and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Ms.Ramandeep Kaur,Advocate for
Mr.Vikram Singh,Advocate for the appellant.

Jaswant Singh,J,(Oral).

Defendant-Pankaj Kumar is in second appeal against concurrent findings returned by both the Courts below whereby suit of the respondents/plaintiffs for partition and permanent injunction was decreed by the Civil Judge (Junior Division)Karnal vide judgment and decree dated 18.7.2014 and findings thereof affirmed in appeal by learned Additional District Judge, Karnal vide judgment and decree dated 24.2.2015.

Respondents/plaintiffs-Smt.Ramesh Kumari widow of one Satish Kumar and Smt.Pooja and Smt.Deepti Arora daughters of said Satish Kumar filed suit for possession by way of partition. Defendant/appellant is none else but son of said Satish Kumar. Plaintiffs/respondents filed suit with the averments that deceased Satish Kumar was owner of residential house bearing No.G-811,situated inside Jundla Gate,Karnal measuring about 160 square yards and a double storeyed shop cum house bearing Municipal No. XV-1880,Ward No.15,situated outside Jundla Gate,Karnal.

He died intestate on 28.1.2009. It was averred that after the death of Satish Kumar, plaintiffs and defendants had become owners in joint possession of the properties in question in equal shares, but defendant did not allow plaintiffs to enter into any of the said two properties. It was further alleged that defendant had tried to sell the properties in question. Defendant having refused to partition the properties by metes and bounds and to handover the actual physical possession of the properties to the extent of their share plaintiffs filed the said suit for partition and permanent injunction.

Upon notice, defendant Pankaj Kumar filed written statement alleging therein that he was exclusive owner of the suit properties and plaintiffs had no right, title or interest therein. It was also denied by him that he had any intention to sell the suit properties.

On the pleadings of the parties, issues were framed. Plaintiffs led evidence. Defendant stepped into witness box as DW1, tendered his affidavit Ex.DW1/A and thereafter his evidence was closed by Court order on 21.4.2014.

The courts below on the basis of evidence adduced on record, decreed the suit of the plaintiffs, as noticed hereinabove. Hence the present appeal.

Heard learned counsel for the defendant/appellant and with her able assistance perused the paper book carefully.

On the basis of sale deed No.1777/1 dated 19.6.1992 Ex.P7, it has been found that house No.G-811 was ownership of deceased Satish Kumar. Further, as per sale deed no.2033/1 dated 4.7.1986, double storeyed shop cum house was in the name of deceased Satish Kumar and his father Sita Ram to the extent of $\frac{1}{2}$ share each. Qua half share of Sita Ram,

plaintiffs relied upon the judgment and decree dated 23.1.1990 wherein Sita Ram had suffered collusive decree in favour of Satish Kumar. Defendant led no evidence to show that the property was joint property or was purchased out of funds provided by him. Further, he also did not lead any evidence to show that Satish Kumar had bequeathed the property in his favour. In these circumstances, it has been rightly held that Satish Kumar had died intestate and after his death his widow, son and daughters being Class-I heir were entitled to suit property in equal proportion i.e. 1/4th share each and defendant had no right to alienate any part of the suit properties till its partition.

In view of the above, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

13.12.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No