

Sr. No.102

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

RSA No. 4071 of 2015(O&M)

Date of decision: 03.10.2017

Parveen

.....Appellant

versus

Bal Kishan and another

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

**Present: Mr. Madan Gupta, Advocate
for the appellant.**

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the defendant from the judgment and decree passed by the lower Appellate Court, arising from a suit for partition.

The facts in the present case are that the plaintiffs/respondents herein filed a suit for partition regarding a commercial plot described in the plaint measuring 183 Sq. yards. A preliminary decree was passed determining the shares as $\frac{2}{5}$ th with the present appellant/defendant and $\frac{3}{5}$ th with the plaintiffs/respondents. There is no dispute regarding the shares as such.

However, at the time of passing of the final decree, parties entered into a compromise; which was recorded by the Court also in its Order dated 1.12.2011. Compromise was based on the statements made by the respective parties. As per this compromise; if the plaintiffs wanted to have the share of defendant, they could deposit ₹ 4 lakhs with the Court which the defendant would be at liberty to withdraw and the share of the defendant would be deemed to have been relinquished in favour of the

plaintiffs.

On the other hand, if the defendants wanted to have a share of the plaintiffs then he was required to deposit ₹ 6 lakhs (since the share of the plaintiffs was higher) and he could have the entire property by depositing that amount. Accordingly, the final decree was passed by the lower Appellate Court.

However, to challenge the decree passed as based upon the above said compromise, the present appellant/defendant had filed an appeal before the lower Appellate Court on the ground that the statement regarding the compromise was made by her husband with whom she had estranged relations. However, later on that appeal was withdrawn by the present appellant on 9.04.2012. Although it was mentioned in the statement made by the appellant that she was withdrawing the appeal because of some technical defect, however, no such technical defect was ever disclosed on the file. Resultantly, the Court simply dismissed that appeal as withdrawn, finally determining the rights between the parties.

Thereafter, she again filed another appeal before the lower Appellate Court against the final decree. However, this appeal was filed without there being any liberty with her to file fresh appeal against the same judgment and decree. Therefore, the learned lower Appellate Court dismissed that appeal on the ground of the second appeal being barred, since no liberty was granted by the Court to the appellant to file the second appeal against the same decree. Besides the Court has also considered the merits and found that the appellant has not been able to make out any point whatsoever to question; either the shares or the compromise. On the basis of this, the appeal was dismissed by the lower Appellate Court.

Aggrieved by the judgment and decree passed by the lower Appellate Court, the present appeal has been filed.

Heard the learned counsel for the appellant and perused the file. This Court does not find any illegality, irregularity or perversity with the findings recorded by the Courts below. Learned lower Appellate Court has rightly recorded that the second appeal against the judgment and decree was not maintainable because no specific liberty was granted to the appellant to file second appeal against the same judgment and decree. Otherwise, also the plea taken by the appellant/defendant regarding non-authorisation of the husband of the appellant to enter into the compromise is not supported by any document on record. It is on record that the husband had, in fact, earlier appeared as witness in the case in support of the present appellant.

In view of the above, the present appeal is dismissed being devoid of any merit.

3rd October, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *No*