

CM No.18127-CII of 2016 in SAO No.67 of 2016 (O&M)
CM No.22229-CII of 2016 in SAO No.89 of 2016 (O&M)

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

Sr. No.103

**CM No.18127-CII of 2016 in
SAO No.67 of 2016 (O&M)
DECIDED ON: May, 02, 2017**

RAMJI DASS AND OTHERS

..APPELLANTS

VERSUS

JAGDISH AND ANOTHER

...RESPONDENTS

2.

**CM No.22229-CII of 2016 in
SAO No.89 of 2016 (O&M)**

RAMJI DASS AND OTHERS

..APPELLANTS

VERSUS

KRISHAN LAL AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Manoj Makkar, Advocate,
for the applicants-appellants.

Mr. D.K. Tuteja, Advocate,
for the respondents-Caveator.

JASPAL SINGH, J.

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In view of the reasons mentioned in two applications, the same
are allowed and the delay of 22 days in SAO No.67 of 2016 as well as 71

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days in SAO No.89 of 2016 are condoned.

SAO Nos.67 & 89 of 2016 (O&M)

By this common judgment, this court intends to dispose of two separate appeals bearing SAO No.67 of 2016 and another SAO No.89 of 2016 as both the appeals are outcome of one at the same judgment dated April 12, 2016 passed by the learned Additional District Judge, Rohtak and common question of law and fact is involved.

2. The brief facts giving rise to the instant appeal are that respondent No.2/plaintiff instituted a suit for separate possession by way of partition on September 07, 2011 against the present appellants and respondent No.1 in respect of property measuring 205-1/3 Sq. Yds. situated at Chinyot Colony, Rohtak. The said suit was dismissed on merits vide judgment and decree dated October 31, 2015 passed by Civil Judge (Jr. Divn.), Rohtak.

3. Aggrieved against the aforesaid judgment and decree dated October 31, 2015, respondent No.1-plaintiff preferred an appeal before the District Judge, Rohtak, which was partly allowed vide order dated April 12, 2016 passed by learned Additional District Judge, Rohtak and the matter was remanded back to the lower court with a direction to pass the decree for partition qua 105/1/3 Sq. Yds. out of the suit property amongst the plaintiff and defendants in equal shares. In view of the order dated April 12, 2016, Civil Judge (Jr. Divn.), Rohtak passed the preliminary decree for partition vide order dated April 25, 2016 in respect of 105/1/3 Sq. Yds. amongst the plaintiff and defendants in equal shares being the legal heirs of deceased Bahadur Chand.

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4. Challenging the impugned order dated April 12, 2016, it has been argued with vehemence by learned counsel for the petitioner that learned lower appellate Court has totally ignored the facts as well as the evidence while deciding an appeal preferred by the respondent No.1-plaintiff. It has also altogether ignored the pleading of the parties while deciding an appeal preferred by respondent No.1-plaintiff. Appellants/defendants while filing the written statement have taken a categorical additional plea that a family settlement took place between the parties and an area measuring 100 Sq. Yds. was given to appellant No.1-Ramji Dass, whereas the remaining area consisting 105/1/3 Sq. Yds was given to appellant No.2-Subhash Chander. The respondent No.2/plaintiff and respondent No.1 had already taken their shares and have no concern with the suit property. Appellant No.2-Subhash Chander became owner in possession of 105/1/3 Sq. Yds. as per family settlement. However, learned lower appellate Court had totally ignored the evidence that appellant No.2-Subhash Chander has been paying the house tax of H.No.1080A/25 situated at Chinyot Colony, Rohtak, who has also applied for getting the site plan sanctioned from the concerned Municipal Committee, Rohtak, which is Ex.DW8/A to Ex.DW8/C. The relevant record was proved by the appellants by examining DW8 Anand Singh, Record Keeper, M.C., Rohtak. The appellant No.2-Subhash Chander is also paying the water and sewerage charges and connections thereof are in his name as is evident from Ex.D13 to Ex.D19. These documents clearly support the case of the appellant No.2-Subhash Chander. While relying upon the pronouncement of this court titled as "*M/s Narinder Kumar Shiv Kumar Dhawan vs. Sunita Chopra*,

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2007(2) Civil Court Cases 164, it has been argued by learned counsel for the petitioner that there is no requirement of law that all the properties jointly owned by the parties have to be partitioned at one and the same time. Similarly, the law does not require that the family settlement arrived at in between members of the family should be reduced into writing. Thus, the findings recorded by the learned lower appellate Court and remand of the matter for passing a preliminary decree in accordance with judgment passed by the learned lower appellate Court suffers from material infirmity, illegality and perversity. As such, impugned judgment/order is not sustainable in the eyes of law and is liable to be set aside.

5. On the other hand, learned counsel for respondent No.2/plaintiff has supported the impugned order. He has submitted that instant appeal has rendered infructuous as the preliminary decree has already been passed by the trial court vide its order dated April 25, 2016 in pursuance of the impugned order dated April 12, 2016 passed by learned lower appellate court.

6. After bestowing due consideration to the aforesaid submissions made by learned counsel for the parties and scrutinizing the impugned order dated April 12, 2016 as well as documents available on file, this court is of the considered view that the submissions made by learned counsel for the appellants are without any legal and factual substance. The impugned judgment dated April 12, 2016 is absolutely in consonance with the settled canons of law and calls for no interference by this court.

7. Undoubtedly, it is amply proved on record that property owned by Bahadur Chand, father of the parties measured 205/1/3 Sq. Yds. Out of it

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100 Sq. Yds. was transferred by him to Ramji Dass-appellant No.1 vide judgment and decree dated September 25, 1987. The said decree has not been challenged by Krishan Lal/plaintiff at any point of time which has attained finality.

8. As far as remaining part of the property measuring 105/1/3 Sq. Yds. is concerned, though, it has been pleaded by respondent No.2-Subhash Chander that in a family settlement, it was given to him but the family settlement could not be proved by him as per the requirement of the law. No doubt, it is not the requirement of the law that family settlement must be reduced in writing but at the same time, there must be some evidence in this regard. The delivery of possession of the property falling to the share holders must be proved. Though, number of documents have been placed on record by the appellants but it is nowhere finds mention that property measuring 105/1/3 Sq. Yds. fell to the share of the appellant No.2-Subhash Chander. Even there is nothing on record to suggest as to when this family settlement was arrived at. Neither any site plan was prepared nor the plaintiff-Krishan Lal was associated at the time of alleged family settlement. Even there is nothing on record to suggest as to what was given to Krishan Lal. Thus, learned lower appellate Court has rightly concluded that family settlement propounded by the present appellants could not be at all established. Thus, there is no infirmity, illegality or perversity in the impugned judgment/order dated April 12, 2016. As such, no interference of this Court is justified therein.

9. As an upshot of the aforesaid discussion, this court does not find any merit in the instant appeals. As such, both appeals mentioned in

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para No.1 of this judgment are dismissed, whereby impugned judgment/order dated April 12, 2016 stands upheld.

10. No order as to costs.

May 02, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No