

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

**RSA No.1819 of 2017 (O&M)
Date of Order: 07.09.2017**

Sanjeev and others

..Appellants

Versus

Jitender

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Gaur, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

Defendants-appellants are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for possession of the land in dispute with the assertion that originally the property belonged to his father, namely, Pale Ram and he has executed a registered Will, dated 06.01.2004, bequeathing property in dispute in favour of the plaintiff. Plaintiff pleaded that mutation with respect to the property in dispute was also sanctioned in his favour on the basis of the aforesaid Will. It was further pleaded by the plaintiff that the defendants who are cousins have taken forcible possession of the land in dispute.

Defendants admitted the ownership of the plaintiff. However, it was stated that in an oral family settlement the land in dispute was given to Mehar Singh, father of the defendants.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff while recording a finding that the defendants have failed to prove the oral family settlement.

Defendants filed the first appeal. Learned first appellate Court after re-appreciating the evidence available on the file, upheld the findings of the trial Court and dismissed the appeal.

Counsel for the appellants has submitted that the Courts below have not appreciated the evidence in the right perspective. He has further submitted that merely because the family settlement has not been incorporated in the revenue record, the family settlement cannot be ignored.

I have considered the submissions of learned counsel and with his able assistance gone through the judgments passed by the Courts below.

In the present case, defendants had not disputed the ownership of the father of the plaintiff. The Will executed by Pale Ram in favour of his son i.e., the plaintiff is also not in dispute. Plaintiff had filed a suit for possession asserting that the defendants have taken forcible possession. The onus lies upon the defendants to prove that there was some oral family settlement between the parties. Defendants have failed to prove the aforesaid oral family settlement. Two Courts have already examined the oral evidence. There is no document available on the file to prove that there was any oral family settlement between the parties.

Second argument of learned counsel for the appellants is that, although, oral family settlement has not been incorporated in the revenue record but that itself would not invalidate the oral family settlement.

I have considered the submission of learned counsel for the appellants.

Oral family settlement is permitted. However, some evidence have to be available there to prove the existence of such oral family settlement. In the present case, defendants have just led oral evidence and brought on record no document to prove that any family settlement took place between the parties.

In view of the aforesaid discussion, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

September 07, 2017
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(ANIL KSHETARPAL)
JUDGE

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