

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

1. RSA No.2361 of 1998 (O&M)
Date of decision : 25.04.2018

Musadi Lal

...Appellant

Versus

Banwari Lal and others

...Respondents

2. RSA No.4185 of 2001 (O&M)
Date of decision : 25.04.2018

Musadi Lal

...Appellant

Versus

Banwari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Babbar Bhan, Advocate for
Mr. R.S. Chahar, Advocate for the appellant

Mr. M.L. Saini, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, two appeals bearing RSA Nos.2361 of 1998 and 4185 of 2001 shall stand disposed of as the controversy involved in both the appeals is with regard to the same property between the same parties. Counsel for the parties are also agreed that both the appeals can be

disposed of by a common judgment.

It has been concurrently found by the Courts below that Mohria, father of the appellant in both the appeals initially filed a suit for partition of the property in dispute. A preliminary decree for partition of the property was passed. An application for passing the final decree was filed. During the pendency of the proceedings for preparation of the final decree, parties entered into a compromise and thereafter made a statement before the Lok Adalat on 19.03.1988 submitting that the parties have partitioned the property through consensus and on the basis of the aforesaid statement in the previous litigation, the suit was dismissed as withdrawn. RSA No.2361 of 1998 is arising out of a subsequent suit filed by Musadi Lal son of Mohria, plaintiff in the previous suit, seeking permanent injunction claiming that the property has not been partitioned as the earlier suit was dismissed as withdrawn.

Both the Courts below have examined this issue vis-a-vis statement suffered by the parties before the Lok Adalat on 19.03.1988 and have recorded the concurrent findings of fact that as per the statement given before the Lok Adalat, parties had partitioned the disputed land and have constructed their respective houses in the portion falling to their respective shares.

Learned counsel for the appellant has vehemently argued that since in the previous litigation, no decree for final partition has been passed, therefore, there was no partition.

This Court has considered the submissions and with the able assistance of the learned counsel for the parties, gone through the judgments

passed by the Courts below and the record of the suit.

The statement suffered by the counsels before the Lok Adalat on 19.03.1988 is not in dispute. The correctness of the statement given by the counsels has also not been challenged before the Court of Law. It is not the case of the plaintiff-appellant that the counsel was not authorized to make such statement. Still further, both the Courts after appreciation of the evidence have found that all the parties to the litigation have divided the property in dispute and are residing in the houses constructed by them in the respective portion which had fallen to their share. Thus, the private partition has also been acted upon.

At the time of admission of the appeal, this Court had framed the following question of law:-

“The substantial question of law arises in this case is whether the statement given by the Counsel for the plaintiff before the Lok Adalat in the year 1988 is binding on the appellant.”

In the considered opinion of this Court, once the correctness of the statement made by the counsel is not being disputed and it is not the case of the appellant-plaintiff that the counsel was not authorized to make such statement, as also the statement made by the counsel has not been challenged in any proceedings, the statement suffered by a counsel would be binding on the party. In the present case, no evidence in this regard has been led. It is not the plea taken by the plaintiff.

In view thereof, there is no scope for interference with the concurrent findings of fact.

RSA No.4185 of 2001 (O&M)

RSA No.4185 of 2001 is arising out of the application filed by the appellant for preparation of the final decree in the previous proceedings. Both the Courts below have dismissed the application on the ground that once the suit itself had been withdrawn, the application for preparation of the final decree would not be maintainable. The parties are entitled to partition the property by mutual consent. In the present case, by mutual consent, parties partitioned the property and suffered a statement before the Lok Adalat and the suit was withdrawn.

In view thereof, there is no scope for interference.

Both the appeals are dismissed.

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

25.04.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**