

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

RSA No.588 of 1999 (O&M)

Date of decision : 14.12.2018

Prem Kumar (deceased) through his LRs and others

...Appellants

Versus

Vinod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Kiran Bala Jain, Advocate for the appellants.

Mr. Pawan Kumar Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit filed by the plaintiffs for declaration that they are joint owners in possession of the property to the extent of half share being natural heirs of late Sh. Jai Ram who was owner with defendant No.1.

The defendants contested the suit and pleaded that on account of partition between the parties Ex.D1 dated 14.08.1963, the property stands divided.

Both the Courts have examined this aspect of the matter and found that Ex.D1 is not a Memorandum of Partition or the Memorandum of Family Settlement rather it is in presenti and, therefore, it required registration because it results in partition of the immovable property.

Learned counsel appearing on behalf of the appellants submitted that Ex.D1 is partitioning the property in the year 1963 and, therefore, the suit filed by the plaintiffs was barred by limitation as the same was filed in the year 1991.

It is not in dispute that Vinod Kumar-plaintiff No.1 was minor when the document Ex.D1 dated 14.08.1963 is alleged to have been executed. Still further, no evidence has come on file which proves that the plaintiff was in the knowledge of the aforesaid deed of partition. Still further, this Court has been read-over Ex.D1 which clearly proves that it is in presenti and it is not in the form of Memorandum of Family Settlement.

In view thereof, both the Courts have rightly decreed the suit filed by the plaintiffs.

Regular Second Appeal is dismissed.

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

14.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No