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

RSA No. 4860 of 2009 (O&M)

Date of Decision: 10.08.2018

Ashok Kumar

....Appellant

Vs

Suresh Kumar and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Mohan Lal Jain, Sr. Advocate, with
Mr. Vikram Jain, Advocate,
for the appellant.

Mr. Sanjeev Gupta, Advocate,
for the respondents.

Mr. Deepak Manchanda, Advocate,
for the applicant (in CM-3856-C-2011).

RAJ MOHAN SINGH, J.(Oral)

1. On the concurrence of the parties, the main case was
adjourned for today.

2. A family settlement has been produced on record with
the following terms and conditions:-

*“a) As per the petrol pump situated on
Jamalpur Ratia Road, Tehsil Tohana, District
Fatehabad and the land attached situated on
Khasra No.232//1 min east (1-13) 10 (6-7) is
pending in litigation before Debt Recovery*

Tribunal (DRT) and the property in question will not be divided between the parties to the present family settlement and will be subject to the decision of the Court in question. Petrol pump will not be part of this family settlement.

b) That the division of the property for the property No.364/13 is being shown in the attached map Annexure S-1 which has been coloured as per the details given below.

c) It is settled between the parties Suresh Kumar-plaintiff/respondent No.1 will be the owner in possession of the property shown in yellow colour in the attached map, comprising east portion of property No.364/13 and also five constructed shops on this property which are property No.374, 375, 376, 377, 378 total land measuring 2601.14 square feet having boundaries eastern side 69'4", western side 73'1", northern side 34'0" and southern side 40'3".

d) It has been decided that Ashok Kumar-appellant will be the owner in possession of the land which is of green colour

in the attached map of the property No.364/13 including four constructed shops in this property numbered 370, 371, 372, 373 along with complete constructed house on these shops, which is total land measuring 2711.18 square feet, the boundaries of which are east side 73'1", western side 65'10", northern side 30'3" and southern side 34'0". Further Ashok Kumar will also be the owner in possession of the path going to this plot. The path will be 10 feet wide from western to eastern and 34 feet in length which is also shown in green colour.

e) It has been further decided between the parties that respondents No.5-(i) Madhu Rani, (ii) Keshav Kumar, and (iii) Deepak Kumar will be the owner in possession of the land shown in red colour comprising in property No.364/13 which is western part of the property including five shops already constructed on this property which are numbered 365, 366, 367, 368, 369 total land measuring 2496.34 square feet, the boundaries of which are eastern side 65'10", western side 72'9", northern side 34'0"

and southern side 42'5". It has also been decided between the parties that the road whole abutting Jamalpur link road of the property No.364/13 will belong to (i) Madhu Rani, (ii) Keshav Bansal, (iii) Deepak Bansal.

f) It has been decided that regarding agricultural land measuring 26 Kanals situated at Tohana, parties shall be bound as per the decision of Learned Additional District Judge, Fatehabad.

g) It has been decided that the attached map Annexure S-1 will be the part of the settlement agreement the contents of which are accepted to all the parties."

3. Perusal of condition No.1 would show the petrol pump in question has been kept out of the purview of compromise for which a claim has been made by the applicant in CM No.3856-C of 2011 which is still pending in this Court.

4. Both the contesting parties are *ad idem* that the interest of the applicant in aforesaid CM No.3856-C of 2011 would be squarely met if the appeal is allowed to be withdrawn in terms of compromise dated 09.08.2018 which is placed on record, leaving the applicant to avail his remedies in accordance

with law as the subject matter of property No.1 i.e. petrol pump has been kept intact.

5. In view of above, this appeal is dismissed as withdrawn in terms of the compromise. However, liberty is given to the applicant in CM No.3856-C of 2011 to get the appeal revived in case statement of fact is found to be otherwise.

6. Since, the appeal is dismissed as withdrawn, therefore, CM No.3856-C of 2011 is also dismissed as withdrawn with the liberty aforesaid.

10.08.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No