

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

**RSA No.5145 of 2010 (O&M)
Date of Order:30.01.2018**

Lalit Sharma

..Appellant

Versus

Bimla Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Maini, Advocate,
for the appellant.

Mr. Amit Jain, Advocate,
for respondent no.1.

Mr. Deepender Ahlawat, Advocate,
for respondent no.3.

ANIL KSHETARPAL, J (Oral)

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff had filed a suit for declaration and permanent injunction and had also prayed that exclusive judgment and decree dated 30.09.2000 would not effect the rights of the plaintiff.

Prakash Lal Sharma was having 4 sons and 1 daughter. Prakash Lal Sharma was owner of a house. Another house was allotted to late Sh. Krishan Lal Shastri, one of the son of Prakash Lal Sharma. Thus, there were two houses with the family.

There was a family settlement and a memorandum of family settlement was executed on 05.02.1998, which was also got notarized. Late

Sh. Krishan Lal Shastri relinquished his rights in the suit property, whereas Basant Lal, the other son of Prakash Lal Sharma and brother of late Sh. Krishan Lal Shastri left his share in the house originally owned by Prakash Lal Sharma, correctness of the memorandum of family settlement dated 05.02.1998 is not being disputed before me.

Defendants contested the suit and claimed that plaintiff's possession is as a licensee. It was further pleaded that Basant Lal as per memorandum of family settlement dated 05.02.1998 has not relinquished his share in the other house, which was originally owned by Prakash Lal Sharma.

Both the courts after appreciating the evidence available on the file, have held that memorandum of family settlement dated 05.02.1998 is proved. As noticed earlier, correctness of memorandum of family settlement dated 05.02.1998 is not being disputed before this Court.

Learned counsel for the appellant has raised a solitary contention that Basant Lal, who has per the memorandum of family settlement dated 05.02.1998, had relinquished his share in the house which was originally owned by Prakash Lal Sharma, has not handed over the possession thereof, hence the memorandum of family settlement dated 05.02.1998, has not been acted upon.

He has further submitted that in the municipal records, plaintiff had got entered this property in her name showing herself to be widow of late Sh. Krishan Lal Shastri and not Basant Lal.

In the considered opinion of this Court, both the arguments do not have any substance. Once execution of the memorandum of family settlement dated 05.02.1998 is not in dispute, the parties separated and

settled their disputes. It is not in dispute that earlier Basant Lal was living in the house, which was originally allotted to late Sh. Krishan Lal Shastri and thereafter plaintiff, his widow is living in that house. This itself shows that the memorandum of family settlement dated 05.02.1998 has been acted upon. It is the case of the plaintiff herself that Basant Lal had left his share in favour of late Sh. Krishan Lal Shastri in the house, which was originally allotted to Prakash Lal Sharma. It is for the appellant to get the aforesaid memorandum of family settlement dated 05.02.1998 implemented qua that house.

Learned counsel for the respondents, on the other hand, submits that the plaintiff has already relinquished her share and handed over possession to late Sh. Krishan Lal Shastri and now it continues to be enjoyed by legal heirs of late Sh. Krishan Lal Shastri.

In the considered opinion of this court, once correctness of the memorandum of family settlement dated 05.02.1998 is not being disputed, the suit filed by the plaintiff has been correctly decreed. Defendant-appellant cannot complain that since the possession has not been handed over, therefore, the memorandum of family settlement dated 05.02.1998 has become redundant.

Next argument of learned counsel is that while getting the mutation sanctioned in the municipal records, plaintiff has been shown as widow of late Sh. Krishan Lal Shastri, which is against the record.

In the considered opinion of this court, the mutation in the municipal records does not confer title. The title is flowing from the family settlement which was reduced into writing as a memorandum of family settlement.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

January 30, 2018
nt

(ANIL KSHETARPAL)
JUDGE

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