

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

RSA No.3502 of 2013(O&M)
Date of decision: 16.05.2018

Ashok Kumar

... Appellant

Versus

Raj Kumari and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashwani Gaur, Advocate for the appellant.
Mr. Harkesh Manuja, Advocate for respondent No.5.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff was partly decreed by the trial Court, vide judgment and decree dated 15.03.2011. As even the appeal preferred against the said decree failed and was dismissed on 06.05.2013, the appellant-plaintiff is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of partition of the suit property. In brief, his case has been that the plaintiff and defendant No.1 had jointly purchased the suit property, pursuant to a registered sale deed dated 20.05.1957, from one Toru Ram s/o Bodha Ram, in equal shares. Subsequently, the site was constructed. The north-west corner of the suit property was constructed by the plaintiff and he was in possession thereof. Likewise, the defendant had constructed a room on the northern-eastern corner. But as the relations between the parties had become strained, thus, the suit.

In defence, it was pleaded on behalf of defendant No.1 that the suit property was actually owned by defendant No.1 and his another brother Subhash, who was subsequently arrayed as defendant No.2. And the plaintiff had no right, title or interest therein, for he was given another house bearing No.292, situated in Housing Board Colony near Murthal Stand, Sonipat pursuant to a family settlement.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that concededly the suit property was purchased by father of the parties pursuant to a sale deed dated 20.05.1957. And none other than the plaintiff conceded in his cross-examination that at that time plaintiff was 4 years of age and defendant No.1 was 7 years old. And defendant No.2 was not even born at that time. Further, the said plot was purchased by his father from his own earnings, but in the name of plaintiff and defendant No.1. Thus, the claim of the plaintiff that he and defendant No.1 had purchased the suit land was wholly misconceived. Likewise, the plea set up by defendant No.1 that he and defendant No.2 held title to the suit property was also erroneous. In fact, the plaintiff as also the defendants had entered into a family settlement (Ex.D5), which showed that plaintiff acknowledge defendant No.2 being owner of 1/3rd share in the suit land. Likewise, even the assertions that owing to a partition, a plot No.292 had fallen to the share of plaintiff, and therefore the suit property was jointly owned by defendants No.1 & 2 only, were also contrary to the family settlement (Ex.D5). Thus, it was proved that the suit property was a joint family property and, therefore, the plaintiff as also the defendants had equal share therein. Which is why the trial Court partly decreed the suit, holding plaintiff to be entitled for 1/3rd share in the disputed house. Concededly,

defendants No.1 & 2 never questioned the said decree by filing any appeal. And, on being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

16.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO