

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

RSA No.4206 of 2016 (O&M)

Date of decision : 23.05.2018

Mohinder Singh (now deceased) through his legal heirs

...Appellants

Versus

Jasbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kumar Vishav Aggarwal, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.10819-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 110 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The plaintiff through his LRs is the appellant in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the property i.e. House No.571 which according to him was allotted by Pepsu Township Board, Patiala in the name of his father Harnam Singh and Conveyance

deed was executed in favour of Harnam Singh. It is undisputed that Nand Kaur was married to late Sh. Jagat Singh. Three sons were born namely Manohar Singh, Avtar Singh and Jasbir Singh. After the death of Jagat Singh, Nand Kaur got married with Harnam Singh and a son was born i.e. Mohinder Singh, plaintiff in the present suit.

Harnam Singh purchased four houses for his four sons. House No.568 was purchased in the name of Manohar Singh, house No.569 was purchased in the name of Avtar Singh, house No.570 and 571 were purchased in his own name. It is further the case of the plaintiff that there was oral family settlement and house No.570 was given to Mohinder Singh whereas house No.571 was given to Nand Kaur which would be later on transferred to Jasbir Singh. Mohinder Singh purchased house No.570 and thereafter sold the same. Nand Kaur suffered a decree with respect to half share of house No.571 in favour of his other son i.e. Jasbir Singh on 01.03.1989. She also executed a registered Will in favour of Jasbir Singh dated 17.06.1998.

Learned counsel for the appellant has submitted that Harnam Singh was owner of the property and there were only two class-1 heirs namely Mohinder Singh, son from the second marriage, and Nand Kaur, widow. He submits that Nand Kaur could only transfer a half share in the property. This is what was done by Nand Kaur vide decree dated 01.03.1989.

Both the Courts below on appreciation of the evidence have recorded the concurrent findings that the plaintiff has failed to prove his possession on the property. The Courts have also found that the plaintiff-

Mohinder Singh was Special Power of Attorney holder of Nand Kaur when decree dated 01.03.1989 was suffered. The Court not only dismissed the suit for injunction but even dismissed the counter claim in part by declaring that Jasbir Singh is owner in possession of half share of the property but he cannot be declared exclusive owner of the property.

The finding arrived at by the Courts below is on the appreciation of the evidence which is neither shown to be perverse nor result of any mis-reading of the evidence. Hence, the present Regular Second Appeal is dismissed.

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

23.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No