

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

RSA No.6954 of 2016

Date of decision : 21.09.2018

Shyama Devi alias Seema and others

...Appellants

Versus

Dalbar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shoaib Khan, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the Regular Second Appeal against the judgement passed by the learned First Appellate Court reversing the judgment passed by the Trial Court and dismissing the suit filed by the plaintiffs for partition of ancestral house.

Bachna Singh was predecessor-in-interest of the parties. Initially, he was married with Smt.Karnailo from whom two sons were born. Thereafter, he married Smt. Shyama Devi alias Seema and three children were born from the aforesaid marriage. There is a house which belongs to the family. The plaintiffs who are children of Bachna through Shyama Devi @ Seema, have sought the partition of the aforesaid house.

Learned trial Court had decreed the suit, whereas learned first Appellate Court had reversed the judgment passed by the trial Court. Learned first Appellate Court has noticed that Shyama Devi when appeared in evidence as PW2 admitted that after the death of her husband, she and her children are in possession of one portion of the property, whereas other

portion is in possession of the defendants, who are children from Smt.Karnailo Devi. In cross-examination, she admitted that there is a partition wall which has been constructed in the year 1990, which runs through the entire property. Apart from this, she also admitted that after the death of her husband, all the family members sat together and arrived at a settlement which of course, was not reduced into writing. Keeping in view the aforesaid statement of Smt. Shyama Devi @ Seema, the learned first Appellate Court has held that partition of the house has already been carried out by the parties in the year 1990.

Learned counsel for the appellants has fairly submitted that the statement of Smt. Shyama Devi, as noticed by the first Appellate Court is correct. However, he submits that the aforesaid statement only proves that the parties are in separate possession of the property. He submits that such statement does not prove the partition of the property. He submitted that wall was constructed only to settle the dispute, at that point of time.

This Court has heard and considered the submissions made by the learned counsel for the appellants at length.

Once correctness of the statement made by Smt. Shyama Devi @ Seema as noted by this Court and also noted by the learned Appellate Court is not in dispute, the judgment passed by the First Appellate Court does not suffer from any error. She apart from admitting the construction of the wall in the year 1990, also admits that after the death of her husband, family members sat together and settled the dispute, pursuant whereof, wall was constructed dividing the house, the First Appellate Court has correctly

held that there was a partition between the family members. Still further, learned counsel for the appellants could draw attention of the Court to any evidence proving that property was being treated as a joint property by the parties after 1990. Still further, this Court does not find any substance in the argument of learned counsel for the appellants that the wall constructed was only temporary arrangement. The wall as constructed still continues to be in existence.

The present suit was filed after a period of 22 years from the date of construction of the wall. Once the parties have resolved their dispute through mutual understanding in the presence of the senior members of family, the plaintiffs cannot be permitted to reopen the entire issue.

Learned counsel for the appellants further submitted that as per natural succession, the plaintiffs would be entitled to 4/6th share, whereas the defendants shall be entitled to only 2/6th share. As noted above, once the parties have settled and divided the property, the plaintiffs now cannot be allowed to re-open the issue which was long back settled between the parties.

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

Regular Second Appeal is dismissed.

21.09.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-Yes/No

Whether reportable:-Yes/No