

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3530 of 2014 (O&M)

Date of decision: 10.01.2018

Sita Ram

..... Appellant

Versus

Mohinder Giri and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sumit Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-8167-C-2014

Delay of 22 days in filing the appeal is condoned for the reasons given in the application and the application is allowed.

CM-8168-C-2014

Application is allowed and the Annexure A-1 is taken on record.

Main Case

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration with a consequential relief of possession claiming that he is owner of half share of the plot which is lying vacant. It was a pleaded case of the plaintiff that originally the property was owned by Mansa Gir, their father. By a Will, this property was given to two brothers i.e. plaintiff and defendant and hence, the plaintiff is entitled to half share of the property.

In the written statement, defendant admitted that the property

was originally owned by Mansa Gir and it has come to two brothers i.e. the plaintiff and the defendant vide Will dated 03.02.1975. However, the defendant pleaded that there was a family settlement between the parties which was later on reduced into writing i.e. memorandum of family settlement Ex.DW-1/A dated 05.03.1990 wherein the property in dispute had fallen to the share of the plaintiff. Both the Courts after appreciating the evidence available on the file dismissed the suit. Mother of the parties appeared as DW-2 and supported the case of the defendant and reiterated that there was a family settlement between the parties through which the property in dispute had fallen to the share of the defendant.

Both the Courts after discussing the evidence of Ram Lubhaya, deed writer, scribe of DW-1/A, Ram Nath as DW-3 and Ashwani Kumar as DW-4 have recorded a concurrent finding of fact that Ex.DW-1/A is proved on the file and through the family settlement, the property had fallen to the share of the defendant.

Learned counsel for the appellant has vehemently argued that the property in dispute is in the share of a common courtyard which is for joint use of the parties. I am afraid such argument cannot be accepted in view of the documentary evidence signed by the plaintiff-appellant dated 05.03.1990.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

10.01.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No