

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

RSA No.127 of 2017 (O&M)

Date of decision : 04.10.2018

Happy and another

...Appellants

Versus

Mahender and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit for possession by way of partition with consequential relief of permanent injunction.

The plaintiffs claimed that they are owners of half share with the defendants in the land measuring 2 kanals 2 marlas which is in the shape of Gair Mumkin gait (Plot). The plaintiffs claimed that it has not been partitioned.

On the other hand, the defendants claimed that the plaintiffs are only owner to the extent of 1/4th share and the parties have already constructed their respective residences. The defendants have further pleaded that a family settlement arrived at for partitioning the property, was later on reduced into writing in the form of Memorandum of family settlement dated 20.07.2006 wherein the partition through family settlement was duly acknowledged and affirmed. It is not in dispute that the aforesaid Memorandum of family settlement dated 20.07.2006 has been proved on file by examining two marginal witnesses namely Udai Singh DW3, Advocate and DW4 Banwari

Lal.

Learned counsel for the appellants submitted that there is some cutting on page 3 of the memorandum and DW2 Mahender Singh, when appeared in witness box has admitted that the partition is always by the Court. Hence, counsel submitted that the Courts have erred in dismissing the suit.

This Court has seen the photocopy of Ex.D1-Memorandum of family Settlement. There is only a small correction of one word on page 3 of Memorandum of family settlement. However, that correction is carried out by the Typist by scoring off the originally wrongly spelt word with correct spelling. The aforesaid correction is also concerning a passage.

As regards the second argument, any admission in oral evidence can be used against the party if such admission is categorical, specific and unambiguous. Defendant No.1 has admitted that the partition is always ordered by the Court. Defendant No.1 being a rustic villager cannot be expected to have expertise in the knowledge of law. The partition of the property particularly in between the family members is permissible orally. In the present case, the oral partition has specifically been acknowledged by way of writing, duly signed by the parties. Such memorandum records that partition took place 15 years ago.

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.

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

04.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

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