

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1282 of 2017 (O&M)
Date of Decision: October 30, 2018

Tota Ram

...Appellant

Versus

Daya Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Balram Prashar, Advocate for
Mr. Jagmohan S. Ghumman, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.3072-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 14 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.1282 of 2017

Appellant-plaintiff has not been successful in claiming relief of declaration and injunction qua the suit property on the basis of the family settlement dated 01.08.1982 (Ex.PX) purported to have been arrived at between him and other brother Shish Pal (since deceased) represented by his legal heirs, i.e., defendants. After the case set up in the plaint, plaintiff claimed absolute ownership of the residential plot as other three siblings,

i.e., the daughters had no right and share.

The suit was contested by the defendants by stating that Chittar Singh, the common ancestor was owner in possession of the suit property and on his demise, was succeeded by his two sons and three daughters. The settlement has been brushed aside, for, in the absence of any testament document Chittar Singh had only 1/5th share and, therefore, could not have relinquished half share. It is the case of the plaintiff that they have voluntarily relinquished their right conferring ½ share of both other brothers. In such circumstances, the courts below had no other option but to dismiss the suit.

Learned counsel for the appellant submitted that the family settlement had been proved through the testimony of the witnesses. However, he did not lay any claim and, therefore, they acquiesced to the family settlement. Chittar Singh had died in the year 1974. Even if the family settlement was not reflected in the revenue record, the parties to the same were required to honour and respect the settlement, therefore, there is illegality and perversity.

I am afraid, the aforementioned argument is not able to cut ice, for, a person who does not have the ownership of ½ share in the suit property could not have relinquished share than what he had or owner was. Concededly, he was owner of 1/5th share. Family settlement did not see the light of the day in any of the proceedings before the authorities regulating the ownership. In such circumstances, the Court had no other occasion but to decline the relief. The opinion expressed does not call for any interference or suffering from illegality or perversity. The judgment and decree cannot be said to be perverse.

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For the reasons stated above, no ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

October 30, 2018 ramesh	(AMIT RAWAL) JUDGE
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Whether speaking/reasoned	Yes/No
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Whether Reportable:	Yes/No
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