

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

**RSA No.1407 of 2017 (O&M)
Date of Decision:13.09.2018**

Gurdeep Singh

...Appellant

Versus

Ranjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Satbir Rathore, Advocate for the appellant.
Mr.R.K.Dadwal, Advocate for respondents No.1 to 3 and 5.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellants is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiffs had filed a suit for declaration that the plaintiffs and defendant are joint owners in possession of a residential house. It has come in the evidence, which is not being disputed that the property was purchased from Rehabilitation Department jointly by Smt.Piar Kaur, Kulwant Singh and Sheela. Thus, Piar Kaur was only owner to the extent of 1/3rd share.

The defendant pleaded that Piar Kaur had executed a registered Testament bequeathing her 1/3rd share in favour of the defendant-appellant and Kulwant Singh, the deceased, represented by his legal heirs who are the plaintiffs No.2(a) to 2(e). The defendant further pleaded that he is exclusive owner of the property on account of family settlement dated 27.1.2003.

Both the courts have found that the execution of the Testament is proved by examining attesting witness namely Mahesh Kumar and the Scribe of Testament. However, the case set with respect to exchange of

land has been rejected by the courts on the grounds that firstly Kulwant Singh was not the exclusive owner of the property. Secondly, on reading of the agreement dated 27.1.2003, it is apparent that it is not memorandum of family settlement. In fact it is an exchange-deed, which was required to be compulsorily registered before it can be admitted in evidence. Thirdly Kulwant Singh could not relinquish share of Smt.Sheela. Hence, both the courts have decreed the suit and determined the share of the parties, in accordance with the registered Testament.

Although, learned counsel for the appellant made sincere attempt to persuade this Court to take a different view, however, keeping in view the fact that he could not point out any perversity, error or substantive misreading or non reading of evidence, hence this Court does not find any good ground to interfere.

In view of the above, the present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

13.09.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No