

111.

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

RSA-153-2017 (O&M)

Date of decision:05.02.2018.

KEWAL SINGH AND ORS

... Appellants

Versus

MANGAL DASS (NOW DECEASED) THROUGH HIS LRS AND ORS
.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Bikramjit Aroura, Advocate,
for the appellants.

HARI PAL VERMA, J.

Appellants have filed the present regular second appeal against the judgment and decree dated 01.11.2016 passed by learned Additional District Judge, Moga whereby their appeal against the judgment and decree dated 26.02.2015 passed by learned Additional Civil Judge (Senior Division), Moga, was dismissed.

Briefly stated, the appellants (hereinafter referred as “plaintiffs”) filed a suit for declaration that they are owners in possession of land measuring 07 kanals (fully described in the heading of the plaint) situated in the area of Village Talwandi Nau Bahar, Tehsil and District Moga, and defendants (respondents herein) have no concern with the same. The partition order dated 27.03.1997 passed by Assistant Collector Ist Grade, Zira, order dated 09.10.2006 passed by District Revenue Officer, Moga exercising the powers of Assistant Collector Ist Grade, the order dated 22.06.2006 passed by Sub Divisional Magistrate, Moga as well as

void. Plaintiffs have also claimed a decree for permanent injunction restraining the defendants from alienating the property in any manner.

In the suit, the plaintiffs alleged that that they are the legal heirs of Dayal Dass, who was son of Smt.Harnam Devi, the original owner of suit land. Harnam Devi, died leaving behind four sons and one daughter, namely, Dayal Dass, Bishan Dass, Mangal Dass, Sarwan Kumar and Smt.Veero. All of them inherited the property left behind by her in equal shares and mutation was also sanctioned in their favour. The suit land in dispute was *banjar kadim* and as per the plaintiffs, it was settled between all the co-shares that if Dayal Dass makes the suit land cultivable then he will get $\frac{1}{2}$ share in the suit property and remaining $\frac{1}{2}$ share will be divided among other co-sharers. However, after a few days, another settlement took place between them and as per said settlement, it was agreed that the joint house of the parties would be owned by Mangal Dass, Bishan Dass, Sarwan Dass, Smt. Veero, whereas Dayal Dass will be the exclusive owner of the suit land. This settlement has taken place in the month of October, 1969 and since then Dayal Dass had been in exclusive possession of the suit land till his death. After the death of Dayal Dass, plaintiffs stepped into his shoes and they have been cultivating the suit land as owners thereof. The mutation regarding inheritance of Dayal Dass has already been sanctioned in favour of the plaintiffs. On 10.10.1996, defendants filed an application for partition of the suit land before the Assistant Collector Ist Grade, Zira and the said Authority passed the partition order dated 27.03.1997. The appeal filed by Dayal Dass against the said partition order was allowed by the Commissioner, Ferozepore Division, Ferozepore and he remanded the matter back to Assistant Collector Ist Grade, Moga for a fresh decision.

However, the District Revenue Officer, Moga while exercising the powers of Assistant Collector Ist Grade, Moga, kept the order dated 27.03.1997 intact. The appeals filed by Dayal Dass before the Collector, Moga and the Commissioner, Ferozepore Division, Ferozepore were also dismissed vide order dated 22.06.2006 and 26.02.2008 respectively. The plaintiffs further pleaded that Sarwan Dass (brother of Dayal Dass), who was predecessor in interest of defendants No.4 to 6 admitted the aforesaid family settlement. In his Will dated 06.06.1996, he made mention of the property situated in Village Mohkam Wala only and did not mention about the property situated at Village Talwandi Nau Bahar. Thus, it means that Sarwan Dass did not claim any right in the property in question. The plaintiffs have become owners of the suit land by way of adverse possession and the defendants have no right, title or interest in the suit land. Defendants were requested number of times to admit the rights of plaintiffs in the suit land, but to no avail. Hence, the suit was filed.

Upon notice, defendants 1, 3, 4 and 6 put in appearance and filed written statement. They denied that any settlement had ever taken place between the legal heirs of Harnam Devi whereby the other legal heirs agreed to give ½ share of suit land to Dayal Dass if he makes the suit land cultivable. The suit land has been fertile from the very beginning. The subsequent settlement was also denied whereunder the suit land was given to Dayal Dass in lieu of his claim in the joint house. They pleaded that they are the co-owners in the suit land. The orders passed by the Revenue Authorities regarding partition of suit land are legal and valid.

The trial Court, vide judgment and decree dated 26.02.2015, dismissed the suit holding that the property in dispute measuring 7 kanals is

joint ownership in possession of all the co-sharers and the plaintiffs have no exclusive right as alleged by them, as no family settlement was ever arrived between the parties and acted upon.

Aggrieved against the aforesaid judgment and decree dated 26.02.2015, the plaintiffs filed an appeal before the Appellate Court, but the same was also dismissed vide judgment and decree dated 01.11.2016.

It is in the aforesaid circumstances, plaintiffs-appellants have filed the present appeal impugning the judgments and decrees of the courts below.

Learned counsel for the appellants has argued that the courts below have committed an error of law by ignoring material documentary evidence while passing the impugned judgments and decrees. It has been wrongly observed by the Lower Appellate Court that there is no evidence to prove the family settlement. The versions of PW1-Kewal Singh, PW3-Balvir Kaur and PW2-Bachittar Singh, Lamberdar, supports the factum and existence of settlement. Though the settlement was oral and not reduced in writing, but it was arrived at between the members of same family, therefore, such family settlement need not be reduced in writing as held by the Hon'ble Supreme Court in **Tek Bahadur Bhujil Versus Debi Singh Bhujil-AIR 1966 Supreme Court 292**. It was evident from the revenue record that Dayal Dass is shown to be in exclusive possession of the suit land since 1969 and the house fell in the share of other co-sharers, namely, Mangal Dass, Bishan Dass, Swaran Dass and Veero. This fact was further corroborated by the subsequent act and conduct of Swaran Dass, who while executing his Will dated 06.06.1996 had left the suit land situated in Village Talwandi Nau Bahar. Moreover, if the exclusive possession of suit land

remained with Dayal Dass since long and after his death with the plaintiffs, then it can be safely presumed that there was a family settlement.

I have heard learned counsel for the appellants.

The issue for consideration before this Court is only with regard to the existence of family settlement at the relevant time in the year 1969. The plea of adverse possession was given up by the appellants before the court below. Admittedly, the plaintiff has projected that family settlement was oral. To prove the said settlement, the appellants-plaintiffs examined Kewal Singh and Balvir Kaur as PW1 and PW3 respectively. Since none of them (witnesses) claimed that they were present at the time of such settlement, the court below rightly discarded their statements. A mere statement that settlement took place, could not be relied upon unless it is proved in accordance with law. Similarly, PW2-Bachittar Singh, Lamberdar also made his statement with regard to said family settlement. Though his examination-in-chief was recorded on 03.02.2014, but he did not turn up for his cross-examination. Thus, his statement could not be read into evidence. In this manner, appellants-plaintiffs could not prove the very execution of family settlement. Moreover, the revenue record pertaining to the suit land reflects the possession of Dayal Dass as a co-owner. The revenue record does not prove the alleged family settlement, whereunder the suit land had been given to Dayal Dass. Merely because Dayal Dass remained in exclusive possession of suit land, it cannot be said that other co-owners have lost their share in the suit land. In the partition proceedings before the Revenue Authorities, Dayal Dass did not raise any plea that the suit land was exclusively given to him in lieu of his claim in the joint house. The Revenue Authorities found no question of title and discarded his said plea

of exclusive possession over the suit land.

No substantial question of law arises in the present regular second appeal.

Since the appellants have failed to establish the oral partition and no revenue record reflects such settlement, this Court does not find any reason to interfere with the concurrent finds of facts recorded by both the courts below. Accordingly, present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

05.02.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No