

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

RSA No.1228 of 2018(O&M)

Date of decision:12.7.2018

Rajender Kumar Mathur and anotherAppellants

VERSUS

Deepak Kumar Mathur and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.P. Jangu, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for separate possession by way of partition qua the suit property, detailed in para 2 of the judgment of trial Court has been decreed vide judgment and decree dated 25.07.2014 that came to be affirmed in appeal by the Additional District Judge, Gurugram on 26.10.2017.

In short, case of the respondents/plaintiffs is that they are co-sharers in suit land to the extent of 3/20 shares wherein defendants No.3 to 7 are co-sharer to the extent of 3/20 shares, defendant No.8 to the extent of 1/20 share and defendants No.1 and 2 13/20 share, situated within the revenue estate of village Gurugram, Tehsil and District Gurugram but at present situated at Daulatabad road within the municipal limits of Gurugam. The predecessors in interest of the parties purchased the suit property in the year 1957 and there was an apprehension that a suit for pre-emption may be filed on that sale, therefore, the vendees decided to take the same on lease in the name of Sh. Phool Chand for a period of 50 years

i.e. up to the year 2007 since the vendees were running a Tooth factory. The factory has been closed and after expiry of the lease period on 25.04.2007, defendants No.1 and 2 have started using the suit property commercially as a venue for celebration of marriages. After expiry of lease period, plaintiffs asked defendants No.1 and 2 several times to get the suit property partitioned by metes and bounds but they did not pay any heed to their request. Hence the suit.

Defendants No.1 and 2 (appellants herein) filed a joint written statement and in turn raised a plea that defendant No.1 is the owner of entire suit property in terms of family settlement arrived at between the parties in the year 1990. In pursuance to family settlement, no objection/affidavits were given by the parties and defendant No.1 and his mother became owner in possession of the suit property. The plaintiffs and defendants No.3 to 8 are in connivance and by filing the suit are trying to grab the suit property.

Defendants No.3 to 7 filed joint written statement admitting claim of the plaintiffs. Defendant No.8 was proceeded against ex parte.

The controversy between the parties led to framing of issue reproduced in para 5 of the judgment passed by the trial Court.

Parties were permitted to adduce evidence in support of their respective claims. After having heard counsel for the parties, in the light of materials on record, the trial Court answered the question culled out in para 17 of the judgment i.e. 1. Whether any oral family settlement was entered into between the parties? 2. If yes, as to what effect? against defendants No.1 and 2 (appellants herein) and as a consequence, suit filed by the respondents/plaintiffs was decreed to the effect that plaintiffs are

entitled to separate possession of 3/20 share being legal heirs of Sh. Fateh Chand Mathur whereas defendants No.1 and 2 are entitled to 3/20 share being legal heirs of Sh. Phool Chand and the remaining defendants are entitled to 3/20 share being legal heirs of Sh. Attar Chand. As has been noticed hereinbefore, the appeal preferred by the appellants did not find favour with the Appellate Court and resultantly findings recorded by the trial Court and so also the judgment and decree passed by the said Court came to be affirmed in appeal.

Counsel for the appellants has not advanced any arguments much less meaningful nor pointed out any materials on record to substantiate their plea raised in appeal that judgments passed by the Courts suffer from error much less perversity warranting intervention in regular second appeal. Since the appellants had raised a plea of oral family settlement effected in the year 1990 between the parties, it was obligatory for them to prove said family settlement and the agreement arrived at between the parties conferring absolute right in the suit property in favour of defendants No.1 or to say that the other co-sharers relinquished their right in the suit property. That being so, I do not find any reason to interfere in the well considered judgments passed by the Courts when otherwise no question of law much less a substantial one has been raised for determination by the Court.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

JULY 12, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no