

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

RSA No.3395 of 2017 (O&M)

Date of decision : 09.07.2018

Harinder Singh

...Appellant

Versus

Dial Singh (now deceased) through his LR's Dial Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.8191-C of 2017

For the reasons stated in the application, which is duly supported
by an affidavit, delay of 52 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The plaintiff-appellant is in the Regular Second Appeal against
the judgment passed by the learned First Appellate Court while reversing the
judgment and decree passed by the trial Court.

The plaintiff filed a suit for joint possession claiming that he is
owner to the extent of 1/3rd share being coparcener. He also challenged the
sale deeds executed by Dial Singh on 29.11.2001 and 29.05.2002 (two sale
deeds). In the written statement, Dial Singh pleaded that the plaintiff was
separated and he had received two acres of land and ₹1,00,000/- in cash.

Learned trial Court overlooked the deed of compromise which is Ex.D1 on the file and decreed the suit. Learned First Appellate Court noticed that the deed of compromise is Ex.D1 and the plaintiff has in cross-examination admitted that he had entered into the compromise with his father Dial Singh on 21.05.2001. He also identified his signatures on the aforesaid compromise. The plaintiff also admitted that his statement was recorded in the previous suit which is Ex.D2 on the file. Pursuant to the aforesaid statement, the previous suit was dismissed as withdrawn vide order dated 12.06.2001.

The First Appellate Court after noticing that once the plaintiff had separated from the family after getting his share from the family property i.e. two acres of land and ₹1,00,000/-, the plaintiff has no right to maintain the suit.

Learned counsel for the appellant has read-over Ex.D1 which is in Punjabi. It is specifically written in the aforesaid compromise that after the settlement, the plaintiff is now left with no right, title or interest in the family property and he will not have any right to challenge the alienation to be made by Dial Singh.

In view of the aforesaid, the suit filed by the plaintiff has been rightly dismissed by the First Appellate Court.

Learned counsel appearing for the appellant has submitted that the property in question in the present suit is not part of the aforesaid compromise and, therefore, the aforesaid compromise would only operate with regard to the property involved in the previous suit.

This Court has considered the submissions. The recital in Ex.D1

which has been read-over by the learned counsel for the appellant are specific. The plaintiff has undertaken that he will be left with no right, title or interest in the property of the family and his all rights are settled on getting two acres of land and ₹1,00,000/- in cash. Still further, the plaintiff-appellant has undertaken that he shall have no right to challenge the alienation of the property, if any, by Dial Singh. Such being the position, this Court does not find any ground to interfere with the finding of fact arrived at by the First Appellate Court which is neither shown to be perverse nor result of mis-reading or non-reading of the evidence.

Learned counsel for the appellant has argued that the findings of the First Appellate Court with regard to the maintainability of the suit and property being coparcenary, are erroneous.

As regards the maintainability, this Court is not going into the issue since the judgment passed by the First Appellate Court is liable to be upheld for other reasons. As regards the property being coparcenary, it may be noticed that once the property had been partitioned and the plaintiff had got separated his share and severed his status from the family, the property which had fallen to the share of the remaining coparceners cannot be said to retain the character of coparcenary property.

In view of the above, the present Regular Second Appeal is dismissed.

09.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No