

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

101

**RSA-6311-2014 (O&M)
Date of Decision : 12.09.2018**

Om Parkash

..... Appellant

Versus

Madan Lal and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Varun Issar, Advocate
for the appellant.

Mr. Gaurav Chopra, Advocate
for the respondent No.1.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the concurrent judgments of the courts below preliminary decreeing the suit for partition by way of possession and rendition of accounts filed by the respondent No.1.

On 01.08.2018 the following order was passed:-

“The admitted facts are that the plot on which the house in dispute stands was purchased in the name of the appellant and the two respondents – Madan Lal and Shagan Lal. It is admitted that the respondents were not living in Chandigarh and ever since the construction of the house the appellant has been staying there (for the last more than 40 years). It was in these circumstances that the respondent No.1 had filed a suit claiming that he was the owner of 1/3rd share in the house and seeking partition, as well as for accounts etc. The case of the appellant on the other hand

was that he had actually purchased the house from his own funds and if that was not proved he had become the owner by way of adverse possession. The courts below held that the appellant had not been able to prove that he had purchased the house from his own funds or that he had become the owner by way of adverse possession and passed a preliminary decree for partition holding that the appellant and his two brothers were equal share-holders of the house in question.

On 06.04.2016 the following order was passed:-

“Mr.Varun Issar, learned counsel for the appellant, on instructions from the appellant, who is stated to be present in Court, submits that other than this appeal, four other appeals, bearing RSA Nos.259 of 2010, 1114 of 2010, 1987 of 2010 and 3170 of 2010, are also pending in this Court, in which the properties belonging to the family, i.e. of the present appellant and the respondents, are in dispute. The appellant and respondent No.1 are stated to be brothers; respondent No.2 is the wife of the late brother of the appellant, and respondents No.3 and 4 are the son and daughter respectively, of the deceased brother of the appellant, i.e. Shagan Lal.

Learned counsel submits that the appellant is willing to give up his share in the properties in Abohar, which are subject matter of the other regular second appeals, if the respondents are willing to give up their shares in the property in Chandigarh, which is subject matter of the present appeal.

Notice of motion, returnable on 11.5.2016.

Dasti also.

The case files of the aforesaid appeals, i.e. RSA Nos.259 of 2010, 1114 of 2010, 1987 of 2010 and 3170 of 2010, be also put up along with this appeal, on that date.”

Thereafter the parties were not able to compromise and consequently the appeal is taken up for hearing. Today again the counsel for the appellant has stated that actually his client has at least 20% share in the properties of the father at Abohar and he would have no objection to pay the two respondents after he is paid the amount of his share in the property at Abohar. Though there is some merit in this argument yet it cannot be lost sight of that in the litigation

relating to the property at Abohar, apart from the appellant and his two brothers/their LRs, two sisters of the appellant are also involved. In the circumstances, if the appellant is able to persuade his other siblings to give him the monetary value of his share of the Abohar properties and then uses that money to purchase the share of the respondents, this Court would have no objection but the matter cannot be kept lingering on this ground. Resultantly, I deem it appropriate to give a period of one month to the appellant to settle this dispute with his other siblings. In case the dispute is not settled the only option would be to dismiss this appeal. Another alternative would be if this dispute is decided independently, whereby the appellant would fix the price of the property and the respondents would exercise the option either to buy out his 1/3rd share or to sell their 2/3rd share to him at the price to be fixed by the appellant.

The matter is adjourned to 05.09.2018. If by that time the compromise does not take place then the appellant would indicate what would be the fair price of the property.

I also find that the respondents No.2 to 4 have not been served. In the meantime, let fresh dasti notice be issued to the respondents No.2 to 4 (LRs of Shagan Lal). Dasti only.

To be shown in the urgent list.”

Today the counsel for the appellant states that no settlement has been possible.

In the circumstances, the appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 12, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No