

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

RSA No.3475 of 2018 (O&M)

Date of decision : 02.07.2018

Chand Krishan Mehndiratta

...Appellant

Versus

Bimla Kumari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Moudgil, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.9203-C of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 14 days in filing the present appeal.

Application is allowed.

Main Case

Plaintiff No.2-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Dispute is with regard to the ownership of House No.1236, Sector 18-C, Chandigarh. The plaintiffs by filing the present suit have sought the declaration to the effect that they are owners to the extent of 1/4th share and the alleged Memorandum of Family Settlement dated 08.12.1983 is illegal, invalid and ineffective.

The defendants contested the suit and pleaded that the

predecessor of the plaintiff namely late Sh. Kanwal Krishan had signed the Memorandum of Family Settlement dated 08.12.1983 and thereafter even executed a receipt receiving ₹1,00,000/- and confirming the Memorandum of Family Settlement.

Both the Courts after examining the evidence have found that the marginal witnesses of the Memorandum of Family Settlement dated 08.12.1983 have been examined as PW1 and PW2. Still further, both the Courts have also noticed that plaintiff No.2 as General Power of Attorney of his father Kanwal Krishan had filed a suit for mandatory injunction with respect to the aforesaid property which was dismissed in default in the year 1995.

The Courts have further found that Memorandum of Family Settlement dated 08.12.1983 has been proved on file and has been acted upon.

Learned counsel for the appellant has submitted that the aforesaid Memorandum of Family Settlement was not acted upon and all the legal heirs of Piara Lal had submitted an application for transfer of the property in favour of all the legal heirs. Therefore, the defendants are estopped from relying upon the alleged Memorandum of Family Settlement.

Learned counsel for the appellant has produced before the Court a photocopy of the alleged Memorandum of Family Settlement dated 08.12.1983 Ex.P10 on the record. As per the aforesaid alleged Memorandum of Family Settlement dated 08.12.1983, two plots at Kala Kusame (Dhanbad) had fallen to the share of Kanwal Krishan Mehndiratta, predecessor-in-interest of the plaintiff.

Learned counsel for the appellant could not point out any evidence that these two plots as referred in the alleged Memorandum of Family Settlement had not been utilized by Late Sh. Kanwal Krishan, predecessor of the plaintiff. Still further, on the basis of the alleged Memorandum of Family Settlement, house in question was transferred in favour of defendant No.5 i.e. late Sh. Avtar Krishan Mehndiratta.

Still further, both the Courts have noticed that the suit filed by the plaintiff is hopelessly time barred as the Memorandum of Family Settlement entered into between the parties in the year 1983, has been challenged by filing a suit in the year 2008.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

02.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No