

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

**RSA No.1745 of 1988 (O&M)
Date of Decision.07.03.2019**

Krishan Chand

...Appellant

Vs

Kesho Ram Aggarwal (Jathlanewala) (D) through LRs and others
...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. SD Sharma, Senior Advocate with
Mr. K.R. Sharma, Advocate
for the appellant.

None for the respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the appellant-plaintiff for possession by way of partition was dismissed by the trial Court and affirmed in appeal.

It was alleged that one Jyoti Parshad common ancestor of the plaintiff and defendant was owner in possession of the disputed shop and house described in para 1 of the plaint situated in village Jathlana. He died intestate and plaintiff and defendants No.1 to 3 being sons and daughters inherited the disputed house and shop in equal shares. Since plaintiff did not want to continue possession jointly, sought partition of the suit property.

Defendant No.1 opposed the suit but did not dispute ownership of the disputed property and explained that he was also owner of some agricultural land but on 24.10.1960, family settlement was arrived at wherein the properties were partitioned. Plaintiff and

defendant No.1 put into separate possession and since then they had been in possession. This fact was in the knowledge of the plaintiff as the suit was filed in 1982. Even family partition was acted upon. The first floor of the disputed house came to the share of plaintiff whereas shop and two acres agricultural land and ground floor of the disputed house came to the share of defendant No.1. Even the gold ornaments were also partitioned and for excess share, ₹150/- was to be paid by plaintiff to defendant No.1. It is in order to avoid liability, suit aforementioned was filed.

Defendant No.2 in the written statement admitted the allegations made in the plaint and claimed her share to be kept joint with the plaintiff in case of partition and in case partition is not possible, her share be also given to the plaintiff exclusively.

Defendant No.3 after appearance did not appear and was proceeded ex parte.

On receipt of replication, the trial Court framed following issues:-

“1. Whether the suit is not maintainable in the present form as alleged in para 1 and 3 of the written statement?

OPP

2. Whether the civil court has got no jurisdiction to try and maintain the suit? OPD

3. Whether the suit is bad for non cause of action? OPD

3-A. Whether there was a valid partition between the parties on 24.10.60. OP parties.

4. Whether the alleged partition was acted upon by the

parties. If so what effect? OP parties.

5. Whether the suit is time barred? OPD

6. Whether the plaintiff is entitled for partition of suit property, if so what is the share of plaintiff in it? OPD

7. Relief.”

Plaintiff in support of pleadings laid evidence so did the defendant.

Mr. S.D. Sharma, learned Senior Counsel assisted by Mr. K.R. Sharma, learned counsel appearing on behalf of the appellant submitted that the partition required registration and possession of the co-heirship was joint, they were in separate possession, thus, preliminary decree was required to be passed.

I have heard learned senior counsel for the appellant, appraised the paper book and of the view that following substantial question of law arises for determination by this Court:-

“Whether partition required registration or not?”

I am afraid argument of Mr. Sharma is not sustainable for the simple reason that plaintiff in replication admitted the writing dated 24.10.1960. Para 3 of the replication reads as under:-

“3. That in reply to para No.3 of the pre-objection it is submitted that the suit property and other agricultural land was owned by Late Jyoti Parshad, but there was no family settlement in the family of Late Jyoti Parshad in the manner as alleged by defendant. The writing which has been referred to by defendant as family settlement has no affect on the interest of plaintiff in the suit

property. The writing cannot be termed as family settlement. Firstly, on the ground that all the members of the family are not the parties to his writing. Secondly, the said writing was never acted upon and thirdly, this document/writing is not registered one. The plaintiff has not concealed any fact from this court while filing this suit but the alleged family settlement was not referred to in the plaint by the plaintiff on the ground that actually there was no family settlement and the alleged writing, now being relied upon by the defendant, was never acted upon. According to the writing the defendant, Kesho Ram was bound to pay Rs.1650/- (after adjustment of Rs.150/- on account of value of excess ornaments) to the plaintiff in three installments and out of these installments, first was payable upto Dec, 1962, second upto Dec.1963 and third upto Dec.1964. The defendant never paid the above-referred instalments to the plaintiff. It clear shows that the alleged writing was never acted upon by the defendant. It is also evident from the subsequent conduct of this defendant that there was no family settlement worth the name in the family. The father of defendants and plaintiff died in the year 1973 leaving behind agricultural land and other property and Kesho Ram, defendant himself got sanctioned mutation regarding agricultural land in favour of all the legal representatives (LRs) including

the plaintiff, on 21/8/79 after appearing before the A.C.II Grade Thanesar. This fact is evident from mutation No.4068, a copy of which is attached. The possession of the agril. land is with the plaintiff and one Amar Nath resident of Jathlana is actual cultivating the land on behalf of the plaintiff and Amar Singh has paid the lease money in advance to the plaintiff. There are also letters in possession of the plaintiff which show that the alleged family settlement was never acted upon by the parties. These letters will be produced after the framing of the issues. The suit property is still in joint possession of the parties. The plaintiff was a poorly person when L. Joti Parshad was alive and deft No.1 was having roaring timber business at Hardawar and during summer season, L. Jyoti Parsahd usually lived with the plff. and because of severe winter, L. Jyoti Parshad had to come in plains to deft No.1. It is evident from the correspondence produced by the defendant that the defendant was ill-treating L. Jyoti Parshad who was forced to go to swarag-Ashram because of the ill-treating of the defendant. The defendants No.1 and 2 executed a sale deed regarding gair-mumkin bara in favour of one Mam Chand after the death of Jyoti Parshad. This fact also shows that the family settlement was never acted upon by the parties. In that sale deed defts no.1 and 2 described themselves as owners of that

Gair Mumkin to the extent of ½ share. The remaining contents of this para are wrong.”

The law with regard to registration of partition is no longer *res integra*, in view of ratio decidendi culled out in judgment rendered in **Amteshwar Anand Vs. Virender Mohan Singh and others 2005(4) RCR (Civil) 485** wherein it has been held that in case parties by way of family settlement have arrived at partition, it does not require registration. A person cannot be permitted to re-agitate the issue by alleging registration to the family arrangement. It is settled laws that it does not require any registration. Parties to the *lis* had pre-existing right being wards of Jyoti Parshad.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below. The substantial question of law is answered in favour of the respondents and against the appellant. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 07, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No