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

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RSA No.1362 of 2017 (O&M)
Date of decision: 08.02.2019

Rajnish Kumar and another **...... Appellants**

Versus

Joginder Kaur and others **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.S. Malwai, Advocate
for the appellants.

None for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while decreeing the suit for partition.

Undisputed facts are that on 1 kanal of land, the business was started by Surinderpal Singh and defendant No.2 and 3. The name of the firm was M/s Master Nails and Wire Knitting Industries, Tehsil and District Bathinda. It is the case of the plaintiffs that Surenderpal i.e. predecessor-in-interest of the plaintiffs and defendant No.3-Kulwinder Singh retired on 31.03.2001. The plaintiffs claims that they are entitled to $1/3^{rd}$ share in the immovable property of the firm. The defendants did not dispute that the property was purchased in the name of the firm on 01.03.1999. However, it was pleaded that in the dissolution deed dated 31.03.2001, partners retired and thereafter, no claim has been made. Both the Courts passed a preliminary decree for partition of the immovable property.

Learned counsel for the appellant while referring to dissolution deed dated 31.03.2001, has submitted that the accounts were settled with the continuing partners who have taken over the running business. However, on careful reading of Para 3 of the dissolution deed, it is apparent that the settled amount was yet to be paid. Para 3 of the dissolution deed is extracted as under:-

> *"The partners have settled the accounts after valuing assets and liabilities and the settled amount i.e. yet to be finalized shall be paid to the retiring partners Sh. Surinder Pal Singh and Kulwinder Singh by the continuing partner Sh. Rajnish Kumar within two months, otherwise Rajnish will pay 12% P.A. interest on remaining amount."*

Thereafter, no payment has been made. It has not been disclosed as to what was the amount payable.

In view thereof, there is no ground to interfere.

However, if the continuing partners wishes to continue with the business of the firm, they shall have to part with the current value of the immovable property to the extent of share of the predecessor-in-interest of the plaintiffs. This issue has already been deliberated upon by this Court in *RSA No.2922 of 2017 titled Vinod Krishan Khanna and others Vs. Siri Krishan Khanna (since deceased) through LRs and others, decided on 06.02.2019*.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

08.02.2019
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No