

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

**RSA No.1900 of 2018 (O&M)
Date of Decision : 05.11.2019**

Manjit Singh

Versus

.....Appellant

Hardeep Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.S.S.Rangi, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondents-plaintiffs was decreed by the trial Court vide judgment and decree dated 17.09.2013, and as even the appeal preferred against the said decree failed and was dismissed on 25.08.2017, defendant No.1, is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that they were exclusive owners in possession of the specific portion of the suit property mentioned at Serial No. A and B, in the cause title of the plaint. Whereas defendants No.1, 3 and 4 were exclusive owners and in possession of the portions depicted at serial No.C, D and E.

In brief, the case set out by them was that plaintiffs, defendants No.1 and 4 happened to be the real brothers and defendant No.3 was their father. The suit property was a Joint Hindu Family property bearing plots No.36 and 37 measuring 313 square yards, situated at Yamuna Nagar. A house was constructed thereupon out of the funds of the Joint Hindu Family. In the month of April 2004, parties had arrived at a family settlement pursuant where to portion marked with letters ABCD fell to the

share of plaintiff No.1. Portion CDEF was allotted to plaintiff No.2 and portion EFGH, AYZX and XYGW had fallen to the share of defendants No. 1, 3 and 4 respectively. Parties were accordingly put in possession of their respective portions. Defendant No.4 had purchased another house adjacent to the portion depicted at serial No.C and constructed a house upon the said portion as also the area that had fallen to his share in family settlement. On 13.08.2005, a yadashtnama was recorded acknowledging the alleged family settlement which was signed by the parties. However, father of the plaintiffs namely Fakir Singh was an old and aged person and was living with defendants No.1 and 2, at Chandigarh, but as defendants No.1 to 3 sought to interfere with possession of the plaintiffs upon their respective portions, thus the suit.

In the written statement filed by defendants No.1 to 3, the suit property was proclaimed as self-acquired property of defendant No.3 and alleged to have been constructed by him with his own funds. Fact that a family settlement was arrived at between the parties was admitted. Further, it was averred that the understanding that formed basis of the alleged settlement was that plaintiffs, defendants No.1 and 4 would look-after and take care of defendant No.3 but post execution of the yadashtnama plaintiff and defendant No.4 failed to discharge their obligations. Resultantly, defendant No.3 was residing with defendants No.1 and 2 and had cancelled the said yadashtnama being the absolute owner of the suit property.

In a separate written statement filed by defendant No.4, he admitted the claim of the plaintiffs.

Upon consideration of the matter in issue and the evidence on

record both the Courts concurrently concluded that evidence on record duly proved that a family settlement was arrived at between the parties which was subsequently reduced into writing i.e. yadashtnama Ex.P2, dated 13.08.2005. Accordingly, in terms of the arrangement set out therein parties were allotted their respective portions in the suit property. The plea that the said yadashtnama was subsequently cancelled by defendant No.3 remained unsubstantiated for lack of evidence. Even, the plea that alleged family settlement was not proved by the plaintiffs in terms of the law of evidence was also rejected, for, the fact that a family settlement was arrived at between the parties and the execution of yadashtnama subsequently was not disputed by the defendants. Even otherwise, the said document was attested by the witnesses and one of them namely Harinder Singh testified the execution thereof in his deposition. Likewise, the question, for, the yadashtnama was not a registered document and therefore, could not be read in evidence was also rejected as no right title or interest was transferred pursuant thereto and the said document merely acknowledged the family settlement arrived at between the parties in the past.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

05.11.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No