

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

**RSA No.2714 of 2017 (O&M)
Date of Decision.18.03.2019**

Krishna Devi and others

...Appellants

Vs

Dharam Pal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs are in regular second appeal against concurrent finding of fact whereby suit seeking declaration of ownership in possession along with defendants No.4 to 6 in respect of suit land i.e. 2 kanals 4 marlas on the basis of family partition dated 4.6.2007 by laying challenge to the sale deed dated 21.08.2009 has been dismissed by the trial Court and affirmed in appeal.

It was alleged that Sukh Ram and Nanak Chand sons of Inder Ram, Rikhi Pal Saini and Gobind Krishan Saini sons of Bhag Singh were owners in possession of the suit land. After the death of Sukh Ram i.e. father of defendant No.1, defendant No.1 inherited the share whereas Nanak Chand, Rikhipal Saini and Gobind Krishan Saini to the extent of 2/3rd share. In the family settlement, Nanak Chand, Rikhipal Saini and Gobind Krishan Saini gave their share in ancestral house in the village to Dharam Pal and in lieu of that he transferred his 1/3rd share in the suit land in favour of Nanak Chand,

Rikhipal Saini and Gobind Krishan Saini and memorandum of partition dated 04.06.2007 was executed.

Defendant No.1 filed suit for partition and injunction against the plaintiff and during pendency of the suit, defendant No.1 sold land measuring 19 marlas i.e. $1/3^{\text{rd}}$ share of defendant No.1 in the suit property to defendant No.3 vide registered sale deed dated 21.08.2009, which was against the terms and conditions of the family settlement.

Defendants No.4 to 6 admitted case of the plaintiff whereas defendant Nos.1 to 3 filed written statement and contested the suit by denying execution of the family settlement.

Plaintiff in support of pleadings examined four witnesses and tendered documents Ex.P1 to P3 whereas defendants examined three witnesses and brought on record documents Ex.D1 to D6.

Mr. Sharma, learned counsel appearing on behalf of the appellants submitted that since the parties had pre-existing right, therefore, family settlement did not require registration. In other words, suit should not have been dismissed simply for want of registration since the rights were crystallized. Defendant No.1 did not have any right as family settlement for partition was itself testimony of defendants.

I am afraid aforementioned argument is not sustainable, as parties to the *lis* are from different branches and acquired right for the first time, much less, did not have any pre-existing right. Section 17 and 49 of the Registration Act do not acknowledge acquisition of title where value of the property is more than ₹100/- in the absence of

registration nor settlement so arrived, reflected in the revenue record.

In such circumstances, defendant No.1 was exclusive owner and the sale deed could not have been said to be null and void.

The concurrent finding of fact, in my view, is based upon correct appreciation of oral as well as documentary evidence and the same cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 18, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No