

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

**RSA No.1108 of 2016 (O&M)
Date of Order:12.03.2020**

Kashmir Singh and others

..Appellants

Versus

Randhir Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Navneet Jindal, Advocate
for the appellants.

Mr. Vipin Kumar, Advocate,
for the applicant-appellant no.3.

Mr. Pawan Kumar Suri, Advocate, for
Mr. R.S.Chauhan, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

The defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the suit filed by the plaintiff-respondent praying for decree of declaration that he is joint owner in possession of 1/4th share in the house with consequential relief of permanent injunction restraining the defendants from alienating the suit house as also for passing a decree for partition of the house in question.

Undisputed facts are that Sh. Bachan Singh had executed a Will dated 12.02.1996 bequeathing his property in favour of his four sons Randhir Singh, Jagir Singh, Kashmir Singh and Dalbir Singh. Jagir Singh had died leaving behind Komal Preet Kaur and Gurjit Singh. Plaintiff claims that there is a residential house in the extended abadi left behind by

Sh. Bachan Singh and therefore, he is entitled to the relief prayed for.

Defendants contested the suit. They asserted that the plaintiff has already sold his share to Dalbir Singh for a sum of Rs.75,000/- in the year 2005.

Both the courts on appreciation of evidence have held that the sale by the plaintiff to Dalbir Singh in the year 2005 is not proved. Both the courts have also examined that although, the defendants have pleaded that there was a family settlement, however, no cogent or reliable evidence was produced to prove that fact.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the Courts below.

Learned counsel for the appellants has submitted that in order to prove oral family settlement, Navinder Singh has been examined, however, Courts have overlooked the evidence of Navinder Singh. He further submitted that it is the defendants, who have constructed 6 rooms in the property in dispute and electric connection is also in the name of Kashmir Singh.

This Court has considered the submissions, however, finds no substance therein.

Statement of Navinder Singh, although, has not specifically considered by the courts, however, that itself would not be sufficient to set aside the judgments of the Courts below. It is pertinent to note here that before the first appellate court, counsel representing the defendants-appellants did not draw attention of the first appellate court on this aspect of the matter.

Still further, it is the case of the defendants that they had

inherited agricultural land from Sh. Bachan Singh which had also been orally partitioned at the time of oral partition of the house in dispute. However, as per the revenue record, it was proved that the parties are still recorded as joint owners of the agricultural property also.

Still further, no document to prove the family settlement has been proved. In such circumstances, on appreciation of evidence, both the courts have drawn a conclusion. There are findings of fact arrived at by the courts below are not proved to be perverse or suffering from any substantive error.

In view thereof, this court does not find any ground to interfere.

Dismissed.

C.M.No.2726-C-2020

For the reasons stated in the application, which is supported by an affidavit, the application is allowed and the name of appellant no.3 be henceforth read as Komal Preet Kaur instead of Kamala.

Amended memorandum of parties is taken on record.

March 12, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No