

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

Sr. No.137

Date of Decision : March 07, 2022

RSA No.449 of 2022 (O&M)

Siksha Devi (through her LR)

...Appellant

Versus

Krishan Kumar and others

...Respondents

RSA No.450 of 2022 (O&M)

Siksha Devi (through her LR)

...Appellant

Versus

Nirmala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Deepak Vashishth, Advocate, for the appellant.

SUDHIR MITTAL, J. (ORAL)

This is an intra family dispute. The property in dispute was purchased by Chander Bhan in the name of one of his sons namely Krishan Kumar and after his death disputes arose between the siblings and the widow of Chander Bhan regarding rights to the said property. The widow namely Siksha Devi filed a suit for declaration of title to the said property whereas Smt. Nirmala wife of Krishan Kumar filed a suit for mandatory injunction directing the defendants therein i.e. other family members to hand over possession of part of the property occupied by them as licensees. The suit for declaration has been dismissed but the suit for mandatory injunction has been partly decreed. Smt. Nirmala has been granted a mandatory injunction for possession of the suit property but the prayer for grant of mesne profits has been rejected. Two appeals were filed by Smt.

Siksha Devi which have been dismissed by the First Appellate Court. Cross-objections preferred by Smt. Nirmala have been allowed and mesne profits have also been granted. Thus, three Regular Second Appeals have been filed.

Learned counsel for the appellant has argued that a family settlement had taken place between the parties and the same was produced by way of additional evidence before the First Appellate Court. The said family settlement unequivocally proves that the suit property was a joint family property. The same should have been taken on record and should have been considered by the First Appellate Court.

The argument cannot be accepted because the alleged family settlement dated 26.01.2014 whereby one of the siblings namely Krishan Kumar had allegedly agreed to pay Rs.1 lac each to his brothers and mother by 31.09.2015 was not pleaded despite the suits having been filed in the year 2017. Reference to the same was not even made by the plaintiff-Siksha Devi while appearing as PW-1. None of the other witnesses also mentioned the same. Although, the document was within the knowledge of the plaintiff, she failed to rely upon the same and thus, the Appellate Court has rightly rejected the application for additional evidence. Its finding that even if it is taken on record, it would not prove jointness of the property is also correct because even a licensee could be paid money for vacating the premises in his/her possession.

It is further submitted that expenses were being borne jointly and this has been proved on record. This too establishes that the house was joint property.

This argument is also liable to be rejected because sharing of expenses would not lead to a conclusion that the property was joint family property.

In view of the above, appeals are dismissed.

At this stage, learned counsel for the appellant submits that warrants of possession has been issued. The appellants have been residing in the suit property for many years and they have no other residence and thus, they may be granted two months time to vacate the premises. The prayer has merit and is accepted. The physical possession shall not be taken before a period of two months has elapsed from today.

Since the main cases are dismissed, the pending applications also stand disposed of.

A copy of this order be placed on the file of another connected case.

March 07, 2022

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned Yes

Whether Reportable No