

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

RSA-2426-2022 (O&M)

Date of decision: 15.11.2022

Birma Devi and another

....Appellants

Versus

Bimla Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kshitij Sharma, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

While assailing the concurrent findings of facts, arrived at by the courts below, the plaintiffs have filed the present appeal. The relevant facts in brief are required to be noticed. They filed a suit for grant of decree of declaration to the effect that they are exclusive owners in possession of the suit land and the documents, if any, prepared by the defendants in their favour qua the suit land by collusion, fraud or forgery are illegal, null and void alongwith seeking a consequential relief of permanent injunction.

Undisputedly, Late Sh.Ganpat Ram and Sh.Chhote Lal (brothers) were joint owners of the suit property (a plot measuring 56.66 square yards). Initially, civil suit no.13 of 1989 was filed titled as ‘**Ganpat Ram and another vs Daya Ram**’, which was decreed in favour of Late Sh. Ganpat Ram and Chhote Lal on 24.04.1996. The defendants’ first appeal was dismissed on 15.02.2000. The possession of the property was delivered to Late Sh.Ganpat Ram and Sh.Chhote Lal, who are brothers. Thereafter, a family settlement was arrived at between

Late Sh.Ganpat Ram and Sh.Chhote Lal on 19.04.1989 and a memorandum of settlement was reduced into writing which has been proved on record as Exhibit DW7/D. After the death of Sh.Ganpat Ram, his children, again, acknowledged the previous family settlement by executing a memorandum of family settlement dated 21.05.2006 i.e Ex.DW7/E, which has been proved on the file. Thus, Sh.Ganpat Ram and his heirs were left with no right, title or interest in the suit property. The plaintiffs claim ownership on the basis of sale deeds executed by the heirs of Sh.Ganpat Ram. Both the courts have found that in view of the initial family settlement, followed by another memorandum of family settlement in writing, the sale in favour of the plaintiffs does not affect the right, title or interest of the defendants. The defendants are purchasers of the property from the former vendees/buyers who purchased the property from Sh.Chhote Lal.

Heard the learned counsel representing the appellants and with his able assistance perused the paperbook.

Learned counsel representing the appellants contends that the appellants are bonafide purchasers as the memorandum of settlement was not to their knowledge. He further submits that the rights, in an immovable property cannot be transferred in the absence of a registered instrument. It is observed here that the adjustment of the property in between the family members, through a family settlement, is a well accepted norm. The courts have always leaned in favour of upholding the family settlement in order to promote this mode of settlement of rights and interest in the property amongst the family members. It was

way back in 1954 when the Supreme Court in **Sadhu Madhu Dass vs. Mukand AIR 1955 SC 481** upheld the validity of a family settlement. Repeatedly, the Supreme Court has been upholding such settlements. The three judges Bench in **Kale and others versus Deputy Director of consolidation (1976) 3 SCC 119** again reiterated the same view. In these circumstances, the family settlement, which has been acknowledged in two different memorandums, is required to be given effect to. The plaintiffs derive their rights on the basis of sale deed dated 20.02.2014 from the children of Late Sh.Ganpat Ram, who had no right, title or interest after 19.04.1989. Late Sh.Ganpat Ram acknowledged the family settlement, which was followed by a memorandum of settlement, executed by heirs of Late Sh.Ganpat Ram on 21.05.2006. In such circumstances, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

15.11.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE