

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

RSA-1817-2023 (O&M)

Decided on:-29.08.2023

Krishan

....Appellant

VS.

Sat Parkash(deceased) through his LRs and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kamal Sharma, Advocate for the appellant.

HARKESH MANUJA J. (Oral)

CM-6520-C-2023

Prayer in this application is for condonation of delay of 5 days in refiling the appeal.

Heard.

For the reasons mentioned in the application, duly supported by an affidavit, application is allowed and delay of 05 days in refiling the appeal is condoned.

Main case

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 26.02.2018 and 27.02.2023 passed by the Courts below, whereby, a suit for declaration and permanent injunction, filed at the instance of appellant-plaintiff, has been partly decreed.

2. Briefly stating, claiming himself to be a member of the joint Hindu family along with respondents-defendants, appellant-plaintiff filed a suit for declaration and permanent injunction, praying for his 1/2 share in the joint properties i.e. two ancestral houses and two shops.

3. Upon notice, suit was contested by respondents-defendants while

controverting the plea raised by the appellant-plaintiff. It was submitted that the appellant-plaintiff had already separated himself around 25 years back from the family having shifted to Nangloi (Delhi) for the purpose of running his own business and was got purchased two properties there by the parents against his share in the houses at Samalkha. It was further submitted that out of the two shops, one was purchased in the name of the mother i.e. defendant No.6, whereas, other was allotted in the name of deceased-father, namely, Puran Chand, much after the appellant-plaintiff shifted to Delhi and, thus, being their self acquired properties, appellant-plaintiff was having no pre-existing right there in.

4. The trial Court vide its judgment and decree dated 26.02.2018, partially decreed the suit in favour of appellant-plaintiff, to the extent of 1/7th share in the two houses situated in Kath Mandi, Samalkha, while declining his entitlement in the two shops. Aggrieved of the judgment and decree dated 26.02.2018, both the sides filed their separate appeals, which were dismissed by the Appellate Court vide judgment and decree dated 27.02.2023, thereby upholding the entitlement of appellant-plaintiff only qua the two residential houses, besides declining his claim over the two shops.

5. Impugning the aforementioned judgments and decrees, learned counsel for appellant-plaintiff submits that the Courts below went wrong while declining the entitlement of appellant-plaintiff as regards the two shops which were purchased during the period, he was working as part of the joint Hindu undivided family alongwith his father and brothers and once, the two shops were purchased out of the earnings and the joint ventures of joint Hindu family, he was entitled to claim his share in the same.

6. I have heard learned counsel for the appellant-plaintiff and gone through the paper book.

7. The burden to prove his case was upon the appellant-plaintiff as he was to stand on his own legs. From the evidence available on record, appellant-plaintiff has not been able to prove on record that at the time of purchase of two shops i.e. one in the name of the mother and other having been allotted in the name of father-Puran Chand, he was working as part of the joint Hindu family along with his father and brothers and those were purchased out of joint ventures. Admittedly, as per his own pleadings, appellant-plaintiff shifted to Delhi for running his separate business. No evidence at all has been produced to prove on record that the two shops in the name of mother and father, respectively, were purchased before the shifting of appellant-plaintiff to Delhi out of the joint ventures. A concurrent finding of fact has been recorded to the contrary by the Courts below against which, no substantive evidence has been pointed out before this Court. Even, learned counsel fails to point out that any material evidence available on record has either been ignored or misread by the Courts below while reaching the conclusions.

8. Accordingly, in view of the discussion made hereinabove, finding no illegality and perversity in the judgments and decrees passed by the Courts below, the present appeal is hereby dismissed.

9. Pending application(s), if any, shall stand(s), disposed of.

29.08.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No