

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

RSA-4301-2019
Date of Decision:-**31.08.2023**

MAHAVIR SINGH

... Appellants/Petitioner(s)

Versus

AJIT SINGH

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Adarsh Jain, Advocate
for the appellant(s).

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KARAMJIT SINGH, J.

1. By way of present appeal, appellant-defendant has challenged the judgment dated 28.01.2016 passed by the Court of Civil Judge (Junior Division), Faridabad whereby the suit of respondent-plaintiff was decreed and judgment and decree dated 16.3.2019 passed by the Court of Additional District Judge, Faridabad whereby the appeal filed by appellant against the judgment dated 28.01.2016 has been dismissed.
2. The brief facts of the case of respondent-plaintiff are that respondent and appellant are co-owners in the suit property and the respondent is having 1/6th share in the suit property, which was not partitioned and that appellant intended to raise construction over the valuable portion

of the suit property and further intended to alienate more than his share out of suit property. Resultantly respondent filed suit for partition of the suit property with consequential relief of permanent injunction.

3. The suit was contested by appellant/defendant who filed written statement contesting the claim of the respondent and took plea that suit property was mortgaged with Sukhram and appellant purchased the mortgage rights from said Sukhram vide registered document No.4918 dated 7.8.2006 and also got redeemed the suit property. The appellant also took plea that Rajbir and Dharambir both sons of Raghbir relinquished their ownership rights in the suit property vide relinquishment deed dated 19.12.2010 in favour of the appellant. The appellant also took plea that oral family settlement also took place wherein respondent plaintiff relinquished all his proprietary rights in the suit property in favour of the appellant after receiving settlement amount of ₹4,20,000/- and thus the respondent is having no right, title or interest in the suit property.

4. On the pleading of the parties, the learned trial Court framed the following issues:-

- i. Whether the plaintiff is entitled to a decree of partition as prayed for ? OPP
- ii. Whether the suit of the plaintiff is not maintainable in the present form? OPD
- iii. Whether the plaintiff has not come with clean hands before the Hon'ble Court and suppressed the material facts? OPD

- iv. Whether the suit of the plaintiff has no cause of action to file the present suit? OPD
 - v. Whether the plaintiff has no locus standi to file the present suit? OPD
 - vi. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
 - vii. Relief.
5. In order to prove his case, counsel for the respondent/plaintiff examined PW-1 Ajit Singh, PW-2 Mohan Singh and PW-3 Amar Singh and also tendered documents Ex.P1 to Ex.P11 which also includes site plan of the suit property, jamabandi for the year 2005-06, Aksshejra, copies of mutation, sale deed, copy of order dated 10.08.2011, copy of FIR and copy of complaint titled Ajit vs. Mahavir.
6. On the other hand counsel for defendant examined DW-1 Gokul Singh, DW-2 OM Parkash, DW-3 Sukhpal, DW-4 Mahavir and DW-5 Hari Om and tendered documents Ex.D2 to Ex.D13 and documents Ex.D1/1 to Ex.D1/4, Ex.D1/5 to Ex.D1/13, Ex.D1/14 to Ex.D1/19, Ex.D1/21, Ex.D1/22 and Mark X.
7. After hearing counsel for the parties, the learned trial Court passed preliminary decree for partition of the suit property while holding that respondent is having 1/6th share while appellant is having 5/6th share in the suit property and decree for permanent injunction was also passed in favour of the respondent.

8. Being aggrieved the appellant preferred an appeal against the judgment and decree dated 28.1.2016 passed by the Court of Civil Judge (Junior Division) Faridabad.
9. The Court of Additional District Judge, Faridabad after evaluating the entire evidence, dismissed the appeal.
10. The appellant being still not satisfied has filed the present appeal.
11. I have heard the counsel for the appellant.
12. The counsel for the appellant while assailing the impugned judgments passed by the Courts below, has submitted that the respondent is having no right, title or interest in the suit property, which is exclusively owned and possessed by the appellant. The counsel for the appellant has further submitted that respondent relinquished his share in the suit property and in lieu of that amount of ₹4,20,000/- was paid to the respondent by the appellant, when the family settlement took place between the parties. The counsel for the appellant has further submitted that as the respondent has got no proprietary rights in the suit property, the suit for partition filed by the respondent deserves to be dismissed.
13. I have considered the submissions made by counsel for the appellants.
14. During arguments, the counsel for the appellant admitted that no such family settlement was recorded in writing and he tried to prove the factum of said family settlement by referring to the depositions of DW-2 Om Parkash and DW-3 Sukhpal. However, as has been rightly observed by both the Courts below, relinquishment of his share out of

the suit property by the respondent could be only through a registered document as per the provisions of Indian Registration Act, as the value, of the said share was more than ₹100/-. In the absence of any such registered document, the learned trial Court as well as the 1st Appellate Court rightly disbelieved the alleged family settlement as per which the respondent relinquished his 1 / 6th share out of the suit property in favour of the appellant for valuable consideration of ₹4,20,000/-. Thus the appellant has miserably failed to prove that he is exclusive owner in possession of the suit property. Rather there is enough evidence available on the record to establish that the respondent is having 1 / 6th share in the suit property.

15. In the light of the above, this Court is of the view that there is no illegality or perversity in the findings recorded by the learned trial Court vide judgment dated 28.1.2016, which are affirmed by the 1st Appellate Court vide its judgment dated 16.3.2019. So no ground is made out to interfere with the findings recorded by both the Courts below, which are based on proper appreciation of evidence available on record. No question of law much less substantial question of law is involved in the present appeal warranting interference by this Court. Accordingly, the present appeal is dismissed.

31.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No