

RSA-9649 of 2018 (O&M)

2023:PHHC:133560

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

RSA-9649 of 2018 (O&M)

Date of decision: 12.10.2023

Mahender

.....Appellant

Versus

Hem Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Parveen Kumar, Advocate, for the appellant.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 19.11.2015 passed by the Court of learned Additional Civil Judge (Senior Division), Tosham, whereby suit for declaration filed by the appellant-plaintiff has been dismissed as well as against the judgment and decree dated 20.07.2018 passed by the Court of learned District Judge, Bhiwani, whereby appeal filed by the appellant-plaintiff against the judgment and decree dated 19.11.2015, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration pleading therein that he has two brothers, namely Samunder and Ishwar. He and defendants were having common ancestor Indirya. They formed a Hindu Undivided Family and were joint owners in possession of the suit property and other properties as detailed and described in the head note of the plaint. On 01.01.2010, he and defendants had entered into a family settlement, by

virtue of which, defendants had relinquished their share in the suit property in his (appellant's) favour and further agreed to get the revenue record corrected. In spite of the said family settlement, defendants failed to get the revenue entries corrected in his favour. He requested the defendants many times in this regard, but they refused.

3. The Trial Court proceeded *ex parte* against the defendants as they did not appear despite service.

4. In *ex parte* evidence, appellant (PW1) examined Rajiv (PW2). Except the self-serving statement of plaintiff and his son PW-2, no evidence was brought on record to substantiate his claim.

5. Therefore, the Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiff vide judgment and decree dated 19.11.2015.

6. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 20.07.2018.

7. Learned counsel for the appellant contended that the judgment and decrees passed by both the courts below are against law and the evidence on record. He further contended that both the Courts below have not appreciated the evidence in the right perspective. He further contended that on 01.10.2010, the plaintiff and the defendants entered into a family settlement, by virtue of which, the defendants had relinquished their share in the suit property in his favour and further agreed to get the revenue record corrected.

8. I have heard learned counsel for the parties and perused the record.

9. Appellant has claimed himself to be owner of the suit property on the basis of alleged family settlement dated 01.01.2010. However, the said family settlement/compromise (Ex.PW1/B) is without any date and the same has not been signed by all the respondents. The appellant has also failed to examine the scribe of the family settlement (Ex.PW1/B). Even proper description of the suit property is not mentioned therein. Therefore, document (Ex.PW1/B) has rightly been discarded by both the Courts below.

10. Concurrent findings have been recorded by both the Courts below that plaintiff failed to prove alleged family settlement between the parties. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

11. In view of above, no question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

12. Dismissed.

13. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

12.10.2023
R.S.

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No