



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 5 of 2015

Date of Decision: 23.07.2024

Surjit Singh

... Appellant(s)

Versus

Joga Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.S.Athwal, Advocate
for the appellant(s).

Mr. Sarju Puri, Advocate
for respondent No.1 and 2.

Anil Kshetarpal, J.

1. Defendant No.1 assails the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision after impleading the sisters and by including their entire joint non-agricultural property.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Mohan Singh had four sons, namely Joga Singh, Surjit Singh, Sucha Singh and Harbhajan Singh apart from three daughters, namely Surjit Kaur, Tarlochan Kaur and Mohinder Kaur. He died intestate. Joga Singh and Sucha Singh filed a suit for possession by way of partition of house comprised in khasra No. 849/2, situated at Banga, Tehsil and District Nawanshahr by metes and bounds. Surjit Singh (defendant No.1) contested the suit while asserting that the suit property has already been partitioned by virtue of a family settlement (Ex.D1) dated 30.07.1997. He further asserted that the suit is bad for non-joinder of the parties and partial partition. Upon appreciation of evidence, the Trial Court found that the suit property has already been partitioned

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between brothers on 30.07.1997. Thus, the suit was dismissed. Before the First Appellate Court, the plaintiffs filed an application under Order VI Rule 17 read with Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) in order to include another residential property with a prayer to implead the three sisters as party in the suit. The First Appellate Court has set aside the judgment of the Trial Court while remitting the matter back for fresh decision.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the appellant submits that unless the First Appellate Court reverses the judgment of the Trial Court with respect to the correctness of findings on the family settlement (Ex.D1) which proves partition of the property, it was not appropriate for the First Appellate Court to set aside the judgment of the Trial Court. He further submits that half of the suit property was purchased by defendant No.1 vide registered sale deed (Ex.D2) from his father. He further submits that three sisters have never claimed any right in the property.

5. Per contra, the learned counsel representing respondent No.1 and 2 submits that the First Appellate Court has, in fact, held that the deed of family partition (Ex.D1) is not proper because the daughters are not the signatories. Hence, there is no error in the order passed by the First Appellate Court.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. As per the provisions of Order XLI Rule 23 and 23A CPC, it is not appropriate for the Courts to remit the matter back to the Lower Court for fresh decision unless the findings arrived at in the impugned judgment are set aside on merits and retrial is considered necessary. Without fulfilling these two parameters, it is not appropriate for the Court to keep the litigation pending by remitting it back. In this case, a significant finding has been arrived at by the Trial Court on the basis of a family settlement (Ex.D1), which is the deed of family settlement arrived at between all the four

brothers. In the absence of reversal of the aforesaid finding, there was no

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occasion for the First Appellate Court to remit the matter back to the Trial Court. Admittedly, three sisters have not claimed any share in the property for nearly 27 years. The plaintiffs themselves filed the suit. After having lost in the suit, they want to keep the litigation pending.

8. Keeping in view the aforesaid facts of the case, the present appeal is allowed and the impugned order passed by the First Appellate Court is set aside. The First Appellate Court will first decide about the legality, correctness and enforceability of the document (Ex.D1). It would be noted here that the observations made by this Court shall not be construed as final expression on the merits of the case. The first appeal is restored at its original number. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 20.08.2024.

(Anil Kshetarpal)
Judge

July 23, 2024**“DK”**

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No