

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113+270

RSA-6076-2018 (O&M)
Date of decision: 22.05.2024

VED PARKASH AGGARWAL AND ANR ..Appellants

Versus

NARESH KUMAR AND ORS ..Respondents

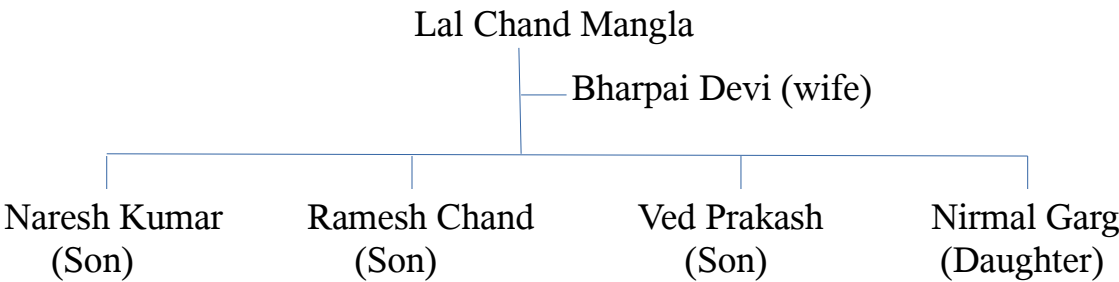
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

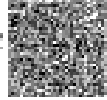
Present: Mr. Sukesh Kumar Jindal, Advocate
for the appellants.

Mr. Vikram Singh Dhakla, Advocate
for respondent No.1 and 2.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing plaintiffs suit for grant of decree of declaration to the effect that they are joint exclusive owners to the extent of half share each of house property shown by letters ‘ABCD’ in the site plan measuring 524 square yards.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. To demonstrate inter se relationship, a short pedigree table is extracted as under:-





4. Sh. Lal Chand Mangla died on 08.09.1995, whereas, Smt. Bharpai Devi died on 13.02.1987. During lifetime, Sh. Lal Chand Mangla purchased a flat in Delhi, whereas, Smt. Bharpai Devi purchased the plot in question at Sonipat. Sh. Naresh and heirs of Sh. Ramesh filed suit on 24.10.2011 while alleging that in an oral family settlement, the parties divided the properties and defendant No.1 to 3 namely Smt. Nirmal Garg, Sh. Ved Prakash Aggarwal and Sh. Vinod Mangla relinquished their share in the property at Sonipat, whereas, the plaintiffs relinquished their share in the flat located at Delhi. The sister Smt. Nirmal Garg also relinquished her share in the flat.

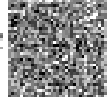
5. Defendant No.1 Smt. Nirmal Garg did not contest the suit, whereas, defendant No.2 and 3 denied oral family settlement.

6. Upon appreciation of evidence, both the Courts have decreed the plaintiffs suit on the following grounds:-

- i. Vide registered relinquishment deed dated 13.10.2008, Sh. Naresh Kumar, Sh. Ramesh Chand and Smt. Nirmal Garg relinquished their share in favour of defendant No.2 and 3 with respect to flat located at Delhi.,
- ii. The plaintiff Sh. Naresh Kumar has deposed that there was an oral family settlement and thereafter, the plaintiffs constructed their house in the portions, which fell to their share with respect to the plot at Sonipat.

7. The learned counsel representing the appellant has made the following submissions:-

- i. The date of the oral family settlement has not been disclosed in the plaint.



ii. In the relinquishment deed dated 13.10.2008, there is no reference to the oral family settlement.

iii. The evidence of Sh. Naresh Kumar is not corroborated by any other witness.

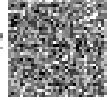
iv. The distribution of the property is unequal.

8. This Court has considered the submissions of the learned counsel representing the appellants.

9. The plaintiff Sh. Naresh Kumar has also examined PW-2 Sh. Naresh, Clerk of Sh. Balwan Singh Pahal, Advocate, who has proved Ex.P-3. Admittedly, the parents of the parties had left behind flat No.A-13, Jai Shiv Apartment, Plot No.10, C-2, West Enclave, Pitam Pura, Delhi and a plot at Sonipat. On 13.10.2008, the plaintiffs as well as Smt. Nirmal Garg transferred their share in favour of defendant No.2 and 3.

10. Smt. Nirmal Garg has not appeared in evidence. Defendant No.2 and 3 are residing in Delhi, whereas, the plaintiffs are residing in Sonipat.

11. Moreover, both the Courts upon appreciation of evidence have come to a firm finding that there was an oral family settlement particularly when defendant No.2 and 3 never claimed any share in the property left behind in the suit property and they permitted plaintiffs to construct their respective houses. In that context, the arguments of the learned counsel representing the appellants are required to be examined. The plaintiffs while filing the suit have specifically pleaded that there was an oral family settlement between the parties and the plot in question came to their share. Hence, failure to disclose the date of oral family settlement would not be fatal to the plaintiffs case.



12. With respect to the second argument of the learned counsel representing the appellants, it may be noticed that the execution of the relinquishment deed dated 13.10.2008, on the part of plaintiffs along with their sister Smt. Nirmal Garg corroborates the oral family settlement dated 06.04.2008. Hence, it was not necessary that there must be recital with respect to the oral family settlement in the relinquishment deed.

13. With regard to the next submissions of the learned counsel representing the appellant, it may be noticed that the circumstances of the present case are sufficient to corroborate plaintiffs case particularly when the execution and implementation of relinquishment deed dated on 13.10.2008 is not disputed.

14. With regard to the last submission of the learned counsel representing the appellant, it may be noticed that there is no evidence as to what was the difference in the market value of the property located in Delhi and plot at Sonipat.

15. Moreover, defendant No.2 and 3 have never staked their claim with respect to the suit property for continuously 24 years.

16. Hence, no ground to interfere is made out.

17. Dismissed accordingly.

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

May 22nd, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*