

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

112

2024:PHHC:004769

**RSA-9842-2018 (O&M)
Date of decision: 15.01.2024**

TEJ KAUR (DECEASED) THROUGH LRS AND ORS.

..Appellants

Versus

JAGJIT SINGH (DECEASED) THROUGH LRS AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harmeet Singh, Advocate
for Mr. Vikram Anand, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the correctness of the concurrent findings of fact arrived at by the Courts below is challenged by the defendants. The plaintiffs suit for separate possession by way of partition of the shop to the extent of ½ (half) share has been decreed. It is claimed by the plaintiff that his grand-father, who was owner of ½ share of the property, gifted the same to the plaintiff, whereas, remaining ½ (half) share belongs to Sh. Charan Singh son of Sh. Bhagat Singh. The defendant while contesting the suit claimed that Sh. Charan Singh and Sh. Mohinder Singh were brothers. Sh. Charan Singh has executed a Will with respect to his share in favour of defendant No.2 and 5. Subsequently, there was a family settlement in which the shop in question came in the share of Sh. Charan Singh exclusively. As already noticed, both the Courts decreed the suit as the defendants (appellants) failed to prove that there was any family settlement between the parties.

2. This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paperbook.

3. The learned counsel representing the appellants contends that the entire joint property was not included in the suit and therefore, the suit is bad for the partial partition.

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

5. It is evident that the maintainability of the suit on the aforesaid ground was not objected to before the trial Court. Though, in the First Appellate Court an argument was taken in this regard, however, the Court found that there was no material to hold that the suit is bad for partial partition. In any case, the plaintiffs have failed to show any prejudice.

6. The last argument of the learned counsel representing the appellants is based on the oral family settlement, which he failed to prove.

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

8. Dismissed accordingly.

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

January 15th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*