

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

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**I** **RSA-2117-2022(O&M)****MAHABIR SINGH** . . . . APPELLANT**Vs.****SURESH KUMAR AND OTHERS** . . . . RESPONDENTS

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**II** **RSA-2168-2022(O&M)****MAHABIR SINGH** . . . . APPELLANT**Vs.****SURESH KUMAR AND OTHERS** . . . . RESPONDENTS**Date of Order: 22.04.2025****CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

Argued by: - Mr. Ranvijay Singh, Advocate, for the appellant.

**DEEPAK GUPTA, J.**

Both the afore-subjected appeals involve common questions of law and facts and so, are being taken up together for discussion. For the purpose of convenience, facts are being extracted from *RSA-2117-2022* titled as '*Mahavir Singh Vs. Suresh Kumar and others*'.

2. Suit for possession by way of partition, regarding property in dispute filed by plaintiff-Mahabir Singh (*appellant herein*) was dismissed by the trial Court on 10.11.2017 after finding that suit property already stood partitioned. The findings as returned by the trial Court have been affirmed by the First Appellate Court vide judgment dated 10.01.2022, while dismissing the appeal of the plaintiff.

3.. Assailing the aforesaid concurrent findings, the sole point urged by Id. counsel for the appellant is that family settlement/partition deed

dated 05.05.1998 (Ex.D1), relied by the respondents-defendants, could not be taken into consideration, as it was not a registered document.

4. This Court does not find any merit in the appeal.

5. Plaintiff claimed the suit property to be joint of the parties and sought partition thereof by stating that he had 1/4<sup>th</sup> share therein. On the other hand, stand of the defendants was that suit property was already partitioned, regarding which writing dated 05.05.1998 was executed, which was duly signed by the father of the plaintiff.

6. Both the Courts below found that suit property already stood partitioned.

7. It will be apt to reproduce the observations made by the First Appellate Court in this regard, which reads as under: -

‘14. The relationship between the parties to the suit/appeal is not disputed. As against the plea of appellant regarding disputed suit property being joint between the parties the respondents in their written statements had pleaded that by way of private partition the parties to the suit are in exclusive possession over their respective share since the year 1990 and that writing of family partition had also been executed on 05.05.1998. The respondents to prove the execution of written family settlement dated 05.05.1998 which had been placed on record Mark D beside respondents no.3 and 4 have also examined DW5 Lal Chand and DW6 Abhey Singh the attesting witnesses to the afore-said family settlement. It is pertinent to mention here that at any stage the document Mark D had not been objected to by Id. counsel for appellant as its original had been placed on record in the separate connected case of partition also pending between the same parties.

15. Admittedly the appellant in cross-examination was shown Mark D on which he had expressed his inability to identity the signatures of his father Lal Chand at point Mark X. But Id. lower court in the impugned judgment has rightly observed that the appellant in further cross-examination has admitted that his father was in GRPF and that his father used to sign. As

against the plea taken by respondents in their written statement qua the private partition of joint properties between the parties dated 05.05.1998 (Mark D) the appellant in replication has simply denied the existence of any such family settlement dated 05.05.1998. It is relevant to note here that the appellant in his replication has nowhere pleaded that the said family settlement dated 05.05.1998 cannot be taken into consideration for want of registration or that his father had never entered into such family settlement with his other brothers or that the said family settlement is forged and fabricated or that it never came into his knowledge or in the knowledge of his late father. In the absence of any such plea it can be held that the appellant did not come to court with clean hands.

16. The respondents in support of their plea that the parties to the suit had been in their separate possession as per family arrangement since the year 1990 and that family settlement Mark D is only a memorandum of partition had relied upon Mark D2 vide which Shree Ram father of respondents no.2 and 3 had been granted compensation of Rs.2000/- on 13.02.1996 i.e. prior to the family settlement dated 05.05.1998 on account of damage to his house in floods in the year 1995. In this regard it is also relevant to note here that the appellant in cross-examination on being specifically asked about the afore-said compensation paid to Shree Ram by the Government on account of damage to his house in khasra no.82 due to floods has given an evasive reply by saying that he do not know in this regard. It is further relevant to note here that the appellant in cross-examination has admitted that as shown in site plan Mark D2 the respondent Birender Singh etc. had constructed their houses and pucca boundary wall shown therein. In view of afore-said evidence on record this court concurs with the observations made by Id. lower court in the impugned judgment that it proves that the houses of respondents had been constructed in the lifetime of Shree Ram before the year 1995. That being so no adverse inference is liable to be drawn against respondents in view of the testimonies of DW5 and DW6 respectively that the family settlement Mark D has not been acted upon as has been argued by Id. counsel for appellant.

17. In the authority **Siromani and another Vs. Hemkumar (supra)** relied upon by Id. counsel for appellant it has been held by Hon'ble Apex Court that the factum of partition by family members of value of more than Rs.100/- require registration and in the absence of registration the document is not admissible to prove title of any of the coparceners to any of the property. In the authority **Kale and others Vs. Deputy Director of Consolidation and others (supra)** relied upon by Id. counsel for appellant however Hon'ble Apex Court has observed that distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere a memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of court for making necessary mutation. In the authority **Siromani and another Vs. Hemkumar (supra)** relied upon by Id. counsel for appellant the Hon'ble Apex Court by observing that there is no pleading in the written statement on behalf of the respondents that apart from the document Ex.D4 there was a partition of the joint family properties had held that Ex.D4 is not admissible in evidence on account of non registration. However the respondents in this case in their respective written statements had specifically pleaded that they/their predecessor in interest had been in possession over the disputed portion/suit property since the year 1990 whereas the family settlement/partition Ex.D1 relied upon by respondents in this case had been executed on 05.05.1998 much after the year 1990. Hence the afore-said authority is not applicable to this case.

18. It is well settled law that a party coming to the court has to prove its case by standing on his own legs and cannot draw any strength from the weakness in the case of its adversary. In the authority **Ratanam Chettiar & Ors Vs. S.M. Kuppuswami Chettiar & Ors 1976 SCR (1) 863** it has been held by Hon'ble Apex Court that a partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened unless it is shown that it was obtained by fraud, coercion, misrepresentation or undue influence. That in such a case the court should require strict proof of facts, because, an act inter vivos cannot be lightly set aside. As has been discussed above since from the evidence

adduced by respondents it has been proved that much prior to the execution of family settlement/partition deed Ex.D1 the parties to the suit and their predecessor in interest had been residing in their respective portions over the suit property as per family arrangement and vide Ex.D1 for the purpose of record only the said family arrangement had been reduced into writing as such in view of authority ***Kale and others Vs. Deputy Director of Consolidation and others (supra)*** the family settlement Ex.D1 do not require registration. For the aforesaid reasons this court is of the considered view that Id. lower court has rightly decided issues no.1 to 3 and 6 against the appellant.”

8. It is clear from the aforesaid observations, which are based upon proper appreciation of evidence on record that suit property already stood partitioned in 1990; that parties were in possession of their respective shares ever-since then and the said partition was further reflected by executing family partition dated 05.05.1998, which was duly proved on record. It was further found that plaintiff-appellant expressed his inability to identify the signatures of his father Lal Chand on the said family settlement.

9. By relying upon ***Kale and others Vs. Deputy Director of Consolidation and others, 1976 AIR (SC) 807***, learned First Appellate Court has rightly observed that in the facts and circumstances of the case, the family settlement was not required to be registered and as such, ***Siromani and others Vs. Hem Kumar, 1968 AIR (SC) 1299***, relied by the appellant, was not applicable to the facts of the case.

10. It has been further found that partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened unless it is shown that it was obtained by fraud, coercion, misrepresentation or undue influence, for which strict proof is required. However, in this case, plaintiff failed to prove that execution of the family settlement was the result of any fraud.

11. In the aforesaid facts and circumstances, this Court does not find any substance in this appeal so as to disturb the concurrent findings of

12. For the reasons mentioned in *RSA-2117-2022* titled as *Mahavir Singh Vs. Suresh Kumar and others*, **RSA-2168-2022** is also dismissed.

A photocopy of this order be placed on the file of connected case.

**(DEEPAK GUPTA)**  
**JUDGE**

**Yes**

*Yes*