

2025:PHHC:019505



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

**RSA-2042-2022 (O&M)
Reserved on: 03.02.2025
Pronounced on: 11.02.2025**

PREHLAD KUMAR

.... Appellant

VERSUS

AJIT ARORA & ANR.

.... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ashish Gupta, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant No.1-appellant challenging the judgment and decree dated 22.03.2018 passed by the Trial Court and judgment and decree dated 21.09.2021 passed by the First Appellate Court.

2. The parties to the litigation are real brothers. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration, separate possession and permanent injunction regarding a house, a plot and a shop. It was averred that the house was originally owned by the mother who had purchased it in 1974 from the joint family funds and the house was inherited by the plaintiff-respondent No.1 and the defendant No.1-appellant after the mother died. The plaintiff-respondent No.1 was residing on the first floor of the house with his family members while the defendant No.1-appellant was residing on the ground floor with and his family members. The plaintiff-respondent No.1 and defendant no.1-

appellant were running a joint business and from the joint funds the plot was purchased by spending equal amounts from their pockets. However, since defendant No.1-appellant was the elder brother and the plaintiff-respondent No.1 and the defendant No.1-appellant were living in a joint family so the sale deed of the plot was got executed only in the name of defendant No.1-appellant on 26.11.1979. The plaintiff-respondent No.1 and the defendant No.1-appellant are jointly running a shop under the name and style of Arora Sweets at Arya Samaj, Patiala and the said shop was joint in the names of the plaintiff-respondent No.1 and the defendant No.1-appellant having been purchased on 29.03.1996. The other brother i.e. defendant No.2-respondent No.2 was given a share from the joint funds, and he was settled at Delhi where he was residing with his family. The plaintiff-respondent No.1 averred that there were disputes between the parties and on 08.06.2013 a panchayat consisting of relatives and respectable persons was convened and in pursuance thereof a memorandum of family settlement took place which was reduced into writing in the presence of relatives and respectable persons when it was agreed that the defendant No.1-appellant shall be the owner in possession of the ground floor of the house and the plaintiff-respondent No.1 shall be the owner in possession of the first floor of the house and the third brother i.e. defendant No.2-respondent No.2 herein can raise construction on the second floor for which 50% expenses were to be incurred by him and 25% each would be borne by the other two brothers i.e. the plaintiff-respondent No.1 and the defendant No.1-appellant. It was also agreed that after selling the shop 1/2 share each shall be kept by the plaintiff-respondent

No.1 and the defendant No.1-appellant. The plot was also agreed to be sold and 1/3rd share was to go to the plaintiff-respondent No.1. However, despite this there were interferences by the defendant No.1-appellant and his family members leading to cases being filed against each other including complaints to the police. Hence, the suit.

3. The defendant No.1-appellant contested the suit. In the written statement though it was admitted that the parties were living separately on the ground floor and first floor of the house, it was denied that the construction was raised from the joint family funds. Regarding the plot, it was denied that the same was purchased out of the joint funds to the extent of 1/2 share each and the stand taken was that the defendant No.1-appellant alone is owner of the plot as he purchased it from his own funds and sources and it was his self acquired property. The existence of any family settlement of 08.06.2013 was denied. As per the defendant No.1-appellant the family settlement was a sham and a fabricated document and the same is liable to be ignored as the self-acquired and self-purchased property of the defendant No.1-appellant had been illegally included in it. Factum of litigation between the parties was not denied. The defendant No.2-respondent No.2 did not file any reply and his defence was struck off.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP

2. Whether the plaintiff is entitled to the relief of possession by way of metes and bounds as prayed for ?

OPP

3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP

4. Whether the memorandum of family settlement dated 8.6.2013 is a fabricated document having been prepared after obtaining the signatures of defendant no.1 on blank papers ? OPD

5. Relief.

5. The Trial Court vide judgment and decree dated 22.03.2018 decreed the suit and granted the relief of declaration that the plaintiff and the defendants have 1/3 share each in the house and the plot while in the shop the plaintiff-respondent No.1 and the defendant No.1-appellant have 1/2 share each. The defendants were also restrained from alienating or disposing off the properties more than their respective shares and the plaintiff-respondent No.1 was held entitled to separate possession by way of metes and bounds of his shares in the properties. Aggrieved by the decision of the Trial Court, an appeal was preferred by the defendant No.1-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 21.09.2021. Hence, the present regular second appeal by the defendant No.1-appellant.

6. The learned counsel for the defendant No.1-appellant has contended that both the Courts have erred in decreeing the suit of the

plaintiff-respondent No.1. It is urged that there was no family settlement between the parties, and it was a bogus document. It is contended that the plot was in the name of the defendant No.1-appellant alone and therefore the Courts have erred in giving the other brothers a share in it.

7. Heard.

8. In the present case the dispute is qua three properties. A house, a plot and a shop. Both the Courts have upheld the family settlement of 08.06.2013. The plea of the defendant No.1-appellant that it was a sham and bogus document was negatived. Rather, the First Appellate Court found that *“As regard his testimony in cross examination he has rather admitted the case of the plaintiff. He has admitted that in earlier case where he has challenged this partition, his cross examination has been effected and same has been put to him as Ex.PA wherein he has admitted that said agreement dated 08.06.2013 was executed in their house in presence of relatives. Whole of the case of the plaintiff has been admitted. He has admitted that the disputed shop is in the name of plaintiff and plaintiff and defendant no.1 are owner to the extent of 1/2 share. He has also admitted that he has no objection in partition of the house where he and plaintiff/respondent is residing nor has any objection in partition of the shop. He has admitted that he alongwith his brother are doing the business in the shop in dispute since 1975. He has admitted that in earlier statement that all the items of the shop were purchased out of the joint funds. He has also admitted that the construction was raised regarding this shop from their joint funds. In cross examination of earlier case he has admitted Surinder Kumar has signed on*

the agreement dated 08.06.2013. He has admitted contents of agreement dated 08.06.2013. He has admitted that his suit regarding challenging agreement dated 08.06.2013 titled as Prehlad Kumar Vs. Ajit Kumar has been dismissed by learned court of Ms. Poonam Bansal, the then Addl. Civil Judge, Senior Division, Patiala and copy of judgment is Ex.PA/1. So only dispute remained regarding property Mark-Y as detailed in the plaint but in this regard also appellant himself has admitted the fact that family settlement took place on 8.6.2013 which was reduced into writing on the same day. Nothing has been brought on record by appellant if he has spent the amount from his individual sources at the time of purchase of property shown in Mark-Y". The property Mark-Y is the plot in dispute. In the face of the admissions of the defendant No.1-appellant himself as noticed by the First Appellate Court, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the defendant No.1-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

9. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.02.2025

Aman Jain

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No